

State Of Uttaranchal And Ors. vs Sidharth Srivastava And Ors. ... on 5 June, 2003

Equivalent citations: AIR2003SC4062, JT2003(5)SC393, 2003(5)SCALE73, (2003)9SCC336, 2003(1)SLJ122(SC), (2003)3UPLBEC2002, AIR 2003 SUPREME COURT 4062, AIR 2003 GUJRAT 267, 2003 AIR SCW 3019, 2003 (3) UPLBEC 2002, 2003 (4) SLT 441, (2003) 5 ALL WC 3580, (2003) 5 JT 393 (SC), 2003 (5) SCALE 73, 2003 (3) SERVLJ 122 SC, 2003 (5) ACE 665, 2003 (3) LRI 1, 2003 (9) SCC 336, (2003) 7 ALLINDCAS 1 (SC), (2003) 2 GUJ LH 602, 2003 SCC (L&S) 1092, (2003) 4 SCT 5, (2003) 4 SERVLR 661, (2003) 3 UPLBEC 2002, (2003) 4 SUPREME 379, (2003) 5 SCALE 73, (2003) 4 ESC 449, (2003) 7 INDLD 23

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, Arijit Pasayat

JUDGMENT

Shivaraj V. Patil J.

1. Delay condoned in SLP (C) No. 10363/2003 (CC 1629/2003).
2. Leave granted in all the SLPs.
3. These appeals are by the State of Uttaranchal assailing the common judgment and order dated 6th November, 2001 passed by the Division Bench of the High Court of Uttaranchal.
4. Resolution of the dispute in these appeals depends on the answer to the question whether the selection made by the Uttar Pradesh Public Service Commission, prior to formation of State of Uttaranchal, is binding on the State of Uttaranchal so as to appoint selected candidates to the services in the State of Uttaranchal having due regard to Article 323(2) of the Constitution of India and Section 78(4) of the Uttar Pradesh Reorganisation Act, 2000.
5. Uttar Pradesh Public Service Commission (UPPSC) published advertisement inviting applications for 544 posts of J.E. Civil/Technical (507 Civil + 37 Technical). The result of selection was published on 4.1.2000. The UPPSC sent its recommendations to the U.P. Government on 30.10.2000. The U.P. Government forwarded the recommendations on 31.10.2000 to the Chief Engineer's Office, Hill Cadre, Almora. The separate State of Uttaranchal came into existence on 9.11.2000. U.P. Government forwarded the UPPSC recommendations in respect of posts in Hill Cadre to the Government of Uttaranchal. On 29.8.2001, Government of Uttaranchal issued the order not to

appoint the selected candidates mentioning two reasons that - (1) the new reservation policy of the State of Uttaranchal is different from that of U.P. and (2) practical and legal difficulties "in such a situation" in giving appointments to the candidates recommended by the UPPSC. The selected candidates, aggrieved by the same, filed a batch of writ petitions assailing the said order, impleading State of Uttaranchal and its officers, State of Uttar Pradesh and its officers and UPPSC. The Division Bench of the High Court, by the common impugned judgment allowed the writ petitions and issued direction to the State of Uttaranchal to give appointments to the writ petitioners. The High Court took the view that the recommendations made by the UPPSC of the erstwhile State of U.P. were binding on new State of Uttaranchal.

6. On behalf of the appellants the following contentions were urged:-

(1) Under Article 323(2) of the Constitution of India, it shall be the duty of a State Public Service Commission to present annually to the Governor of the State a report of the work done by the Commission. The Governor shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the State Legislature of the State.

(2) Section 78(1) of the Uttar Pradesh Reorganisation Act 2000 (for short 'the Act') declares that the Public Service Commission of the existing State of Uttar Pradesh shall be the Public Service Commission from the appointed day for the State of Uttar Pradesh. Section 78(4) clearly provides that the report of UPPSC would be presented under Article 323(2) to the Governors of the State of Uttar Pradesh and Uttaranchal. But it was the Governor of Uttar Pradesh alone who was to cause the report alongwith Memorandum explaining the reasons for non-acceptance of the advice of the Commission to be laid before the Legislature of the State of U.P. The reason why the Legislature provided "it shall not be necessary to cause such report or any such memorandum to be laid before the Legislative Assembly of the State of "Uttaranchal" was because the UPPSC was not a joint Commission since State of Uttaranchal was not even in existence and no functions could be rendered by the pre-existing UPPSC in respect of the new State of Uttaranchal.

(3) In view of the express parliamentary intention that such a report need not be laid before the Legislative Assembly of the State of Uttaranchal suggests that the report of the UPPSC is not binding upon the State of Uttaranchal which would have to constitute its own Public Service Commission for the purpose of discharging constitutional duties vide Article 315.

(4) Section 86 of the Act is a residuary provision. It deals with the effects of the pre-existing laws. Even assuming, the U.P. Service (Reservation in favour of Scheduled Castes & Scheduled Tribes and Other Backward Classes) Act, 1994 continued to be in force within the territories of Uttaranchal, it does not oblige the State of Uttaranchal to follow a similar policy of reservation.

(5) The decision of the State of Uttaranchal dated 29.8.2001 not to appoint the selected candidates on the recommendations of the UPPSC is not an unconstitutional act and no fault can be found with the said decision. For the purpose of appointment to public services, the State of Uttaranchal is to have due regard to Article 315 of the Constitution. In view of Section 78(4) of the Act, communication of the State of U.P. forwarding the list of candidates to the appellant State has also no legal force.

(6) The order passed by the Government that after the constitution of the State of Uttaranchal, the reservation policy having been changed and that a decision that candidates recommended by the UPPSC should not be appointed in various departments of the Government of Uttaranchal, is a decision which is valid and consistent with the autonomy and the freedom of the executive action enjoyed by a newly-born State.

(7) The High Court committed an error in wrongly construing the relevant constitutional provisions and Section 78(4) of the Act in judging the validity of the order dated 29.8.2001 of the State of Uttaranchal.

(8) Re-organisation of a State is an event which necessarily alters the existing State affairs. Merely because the Governor of the State of U.P. did not reverse the report of the UPPSC did not oblige the State of Uttaranchal to make appointments of the candidates selected by UPPSC.

(9) Even though a person is placed in the merit list of selected candidates, he did not have an indefeasible right to be appointed as held by this Court: validity of the State action in these appeals must be viewed with reference to the creation of a new State and its commitment to make appointments to the public services within the State on the basis of the recommendations of the Public Service Commission. Though, there cannot be any arbitrary refusal to appoint, there must be a nexus between the existence of a Public Service Commission for a State and its recommendations before the State Government. In the present cases, there was no advertisement by the State of Uttaranchal and no selection was made by Public Service Commission of the State of Uttaranchal; hence to rely upon recommendations of the UPPSC for appointments to the erstwhile Hill Cadre would be legally apposite.

7. Opposing these submissions and supporting the impugned judgment, submissions made on behalf of the respondents were:-

(1) The decision dated 29.8.2001 of the State of Uttaranchal cannot be justified on the basis of Section 78(4) of the Act. As can be seen from the said decision, it is not based on Section 78(4) of the Act but based on the change of the reservation policy by the new State of Uttaranchal; the State cannot add such fresh reasons subsequently in the shape of an affidavit or otherwise. When the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so

mentioned and cannot be supplemented by fresh reasons.

(2) The reservation policy of the State of U.P. is embodied in the Uttar Pradesh Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994. The said Act continues to remain in force in Uttaranchal in terms of Section 96 of the Act as it has not been amended or repealed by the Uttaranchal Legislature. The executive decision dated 29.8.2001 cannot prevail over U.P. Act, 1994. Consequently, the decision dated 29.8.2001 was unsustainable.

(3) The affidavit of the U.P. Government shows that it had accepted the recommendations of the UPPSC. The letter of Chief Engineer, Uttaranchal, PWD, Almora dated 4.1.2001 refers to the letter of UPPSC dated 30.10.2000 to the Chief Engineer, PWD, and the subsequent letter dated 7.11.2000 of the UPPSC to the Chief Engineer, Almora, both were prior to the re-organisation. Therefore, no further acceptance by the Uttaranchal Government was involved in these cases.

(4) The further fact that Uttaranchal Government has been making appointments of candidates selected by the UPPSC even after U.P. State was re-organised vide appointment letters dated 28.9.2000 and dated 1.3.2001 establishes that the Uttaranchal State considered the recommendations of the UPPSC prior to re-organisation as valid and binding. It is not open to the State Government to resile from this position subsequently.

(5) The conduct of Uttaranchal Government in making some appointments and refusing to make other appointment recommended by the UPPSC is not only inconsistent and arbitrary but also lacs bona fide. The object behind the decision of 29.8.2001 appears to be to bypass the constitutional requirement as well as the recruitment rules made under Article 309 of making appointments only through the Public Service Commission.

(6) Section 78(4) requires the report of the UPPSC as to the work done by the Commission prior to the date of re-organisation shall be presented under Article 323(2) not only to the Governor of U.P. but also to the Governor of the State of Uttaranchal. While for the Governor of Uttar Pradesh, it was mandatory to place the report of the UPPSC before the Legislative Assembly of U.P., in the case of the advice of the Commission was not accepted in some cases as far as the Governor of Uttaranchal is concerned, it said that "it shall not be necessary" to cause such report or any such memorandum to be laid before the Legislative Assembly of the State of Uttaranchal. The words "it shall not be necessary" only mean that it is not obligatory but discretionary. There is no prohibition to cause such report or a memorandum to be laid before Uttaranchal Assembly if the Governor so desires. Parliament in exercise of powers mandated the UPPSC to present its report to the Governor of Uttaranchal also shows its clear intention that recommendations of the UPPSC are equally binding on Uttaranchal as well.

(7) The absence of mandatory legislative check in the case of Uttaranchal, does not in any way affect the accountability of the State Government to the judiciary in the instant case which is an independent constitutional requirement. The High Court was right in holding that the reasons given in the decision of the Government of Uttaranchal dated 29.8.2001 are not valid.

(8) As held in *P. Mahendran and Ors. v. State of Karnataka and Ors.* and *N.T. Devin Katti and Ors. v. Karnataka Public Service Commission and Ors.* selection of appointment has to be made in accordance with the rules in force at the time of initiation of the selection process i.e. the publication of advertisement. Therefore, change of reservation policy subsequent to the selection cannot come in the way of making appointments on the basis of the selection made by the UPPSC for the posts earmarked in the Hill Region of U.P. which became an integral part of the State of Uttaranchal on the appointed day.

(9) When there are clear vacancies and there are candidates selected in accordance with law by a constitutional body, namely, UPPSC and there is urgent need to fill up the said vacancies, it is wholly arbitrary on the part of the State not to fill up the vacancies by the candidates selected and recommended by the UPPSC and going in for fresh requirement bypassing the Public Service Commission.

8. It is useful to notice the provisions of the Constitution of India and the Act to the extent they are relevant, in examining the rival contentions, urged on behalf of either side.

RELEVANT PROVISIONS OF THE CONSTITUTION OF INDIA "Article 2:- Admission on establishment of new States - Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit."

9. Under Article 153, there shall be a Governor for each State. The executive power of the State shall be vested in the Government and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Under Article 168, for every State, there shall be a Legislature. There shall be a Legislature. There shall be a High Court for each State as per Article 214.

"Article 309 - Recruitment and conditions of service of persons serving the Union of a State:- "Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Providedany such Act."

"Article 315. Public Service Commission for the Union and for the State - (1) Subject to the provisions of this article, there shall be a Public Service Commission for the

Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States and if a resolution to that effect is passed by the House, where there are two Houses, by each House of the Legislature of each of those States Parliament may by law provide for the appointment of a joint State Public Service Commission (referred to in this Chapter as joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question."

"Article 320:- Functions of Public Service Commissions - (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission as the case may be, shall be consulted-

(a) on all matters relating to methods of recruitment to civil services and for civil posts:

(b) On the principles to be followed in making appointment to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers:

(c)

(d)

(e)

(4)

(5)"

10. Under Article 320, it shall be duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively. The Union Public Service Commission or the State Public Service Commission, as the case be, shall be consulted on the matters enumerated under Article 320(3) which include all matters relating to methods of recruitment to civil services and for civil posts.

"Article 323:- Reports of Public Service Commissions - (1)"

(2) It shall be the duty of a State commission to present annually to the Governor of the state a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relating to that State, and in either case the Governor shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State."

RELEVANT PROVISIONS OF THE UTTAR PRADESH REORGANISATION ACT, 2000 "Section 2:-
In this Act, unless the context otherwise requires:-

(a) to (d)

(e) "existing State of Uttar Pradesh" means the State of Uttar Pradesh as existing immediately before the appointed day;

(f) to (j)"

Section 3:- "On and from the appointed day, there shall be formed a new State to be known as the State of Uttaranchal comprising the following territories of the existing State of Uttar Pradesh, namely:-

Pauri Garhwal, Tehri Garhwal, Uttar Kashi, Chamoli, Dehradun, Nainital, Almora, Pithoragarh, Udham Singh Nagar, Bageshwar, Champawat, Rudrapur and Hardwar districts, And thereupon the said territories shall cease to form part of the existing State of Uttar Pradesh."

11. Provisions as to services are made under Part VIII of the Act in Section 72 to 78. Under Section 77, the Central Government has power to give necessary directions to the State Government of U.P.

and the State Government of Uttaranchal for the purpose of giving effect to the foregoing provisions of Part VIII.

Section 78:- "(1) The Public Service for the existing State of Uttar Pradesh shall, on and from the appointed day, be the Public Service Commission for the State of Uttar Pradesh.

(2)

(3)

(4) The report of the Uttar Pradesh Public Service Commission as to the work done by the Commission in respect of any period prior to the appointed day shall be presented under Clause (2) of article 323 to the Governors of the States of Uttar Pradesh and Uttaranchal, and the Governor of the State of Uttar Pradesh shall, on receipt of such report, cause a copy thereof together with a memorandum explaining as far as possible, as respects the cases, if any, where the advice of the commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State of Uttar Pradesh and it shall not be necessary to cause such report or any such memorandum to be laid before the Legislative Assembly of the State of Uttaranchal."

Section 86:-

"The provisions of Part II shall not be deemed to have affected any change in the territories to which the Uttar Pradesh Imposition of Ceiling of Land Holding Act, 1961 and any other law in force immediately before the appointed day, extends or applies, and territorial references in any such law to the State of Uttar Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day."

12. The facts that are not in dispute are:

13. The State of Uttaranchal was formed from 9.11.2000 as per Section 3 of the Act. UPPSC published advertisement inviting applications for 544 posts of J.E. Civil/Technical - (507 Civil + 37 Technical). The result of selection was published on 4.1.2000. UPPSC sent its recommendations to the U.P. Government on 30.10.2000. The U.P. Government forwarded the recommendations on 31.10.2000 to the Office of the Chief Engineer, Hill Cadre, Almora. Government of Uttaranchal, by order dated 29.8.2001, took a decision not to appoint the candidates selected by the UPPSC pursuant to selections made on 4.1.2000 giving two reasons - (1) that the new reservation policy of the State is different from that of the State of U.P. and (2) there were practical and legal difficulties "in such a situation" in giving appointments to the candidates recommended by the UPPSC. The aggrieved candidates filed writ petitions assailing the said order in the High Court of Uttaranchal impleading State of Uttaranchal and its officers, State of U.P. and its officers and UPPSC.

14. After Independence from time to time the State were reorganized, created or carved out from an existing State for historical or administrative and other reasons and at times consequent upon the demand/agitations of people of particular region/area the States were reorganized or new States were formed for better administration, development and promotion of the interest of particular region or area of a State keeping in mind the overall development, needs and requirements of that region or area.

15. Under Article 2 of the Constitution, Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit. The Parliament passed the Act to provide for the reorganization of the existing State of Uttar Pradesh and for matters connected therewith. As per Section 3 of the Act a new State known as the State of Uttaranchal, comprising certain territories of the existing State of Uttar Pradesh, was formed, which came into existence from the appointed day being 9.11.2000.

16. Under the scheme of the Constitution there shall be Governor for each State, there shall be a Legislature for every State and there shall be a High Court for each State. So also there shall be a Public Service Commission for each State under Article 315 of the Constitution. Article 315(2) provides that two or more States may agree to have a joint Public Service Commission for that group of States. As per the resolution of the State Legislatures, Parliament may by law, in such case, provide for the appointment of a joint State Public Service Commission. Further, the Public Service Commission for the Union, if requested so by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the States as per Article 315(4). We may notice here itself that State of Uttaranchal has neither agreed for appointment of a joint Public Service Commission Under Article 315(2) nor requested the Union Public Service Commission to serve its needs under Article 315(4). Under Article 309, subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Under this provision the Legislature of the State of Uttaranchal, after coming into existence, has power to regulate the recruitment, and conditions of service of persons appointed, to the public services and posts in connection with the affairs of the State of Uttaranchal.

17. Functions of the Public Service Commissions are enumerated in Article 320 of the Constitution. It shall be the duty of the Union and the State Public Service Commission to conduct examinations for the appointments to the services of Union and the services of the State respectively. The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts; on the principles to be followed in making appointments to civil services and posts, etc.

18. Under Article 323(2) a duty is cast on a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and it shall be the duty of a joint Commission to present annually to the Governor of each of the State the needs of which are served by the joint Commission. The Governor shall on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

As per Section 2(e) of the Act "existing State of Uttar Pradesh" means the State of Uttar Pradesh as existing immediately before the appointed day. Section 78(1) of the Act clearly states that the Public Service Commission for the existing State of Uttar Pradesh shall, on and from the appointed day, be the Public Service Commission for the State of Uttar Pradesh. In other words, UPPSC continues to be the Public Service Commission for the State of Uttar Pradesh only, excluding new State of Uttaranchal. Section 78(4) of the Act requires the UPPSC to present a report as to the work done by the Commission in respect of any period prior to the appointed day under Article 323(2) of the Constitution to the Governors of the States of Uttar Pradesh and Uttaranchal. But it specifically states that the Governor of the State of Uttar Pradesh shall, on receipt of such report, cause a copy thereof together with memorandum explaining as far as possible, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non acceptance to be laid before the Legislature of the State of Uttar Pradesh and it shall not be necessary to cause such report or any such memorandum to be laid before the Legislative Assembly of the State of Uttaranchal. UPPSC, is not a joint Commission for the States of Uttar Pradesh and Uttaranchal. The State of Uttaranchal did not take recourse to Article 315(2) to have a joint Public Service Commission for both the States. Under Article 2 of the constitution, Parliament may by law admit into Union or establish new States on such terms and conditions as it thinks fit. New State of Uttaranchal is formed on the terms and conditions contained in the Act. The UPPSC of the existing State of Uttar Pradesh shall be the Public Service Commission for the State of Uttar Pradesh as already stated above. It is not the Public Service Commission for the State of Uttaranchal. If it were to be so, provisions could have been made in Section 2 read with Section 78 of the Act to include State of Uttaranchal within the domain of UPPSC till such time Uttaranchal State Public Service Commission came into existence. Hence, the selection of the candidates made by UPPSC cannot be accepted as selection made for the State of Uttaranchal in the light of Section 78(4) of the Act. For the immediate purpose, Section 78 of the Act dealing with the Public Service Commission has to be looked into carefully. Under Section 78(4), there is no legislative command or compulsion to the Governor of State of Uttaranchal to place report submitted by UPPSC alongwith the memorandum explaining why advice of the Commission was not accepted. The reason as to why the Parliament provided specifically that "it shall not be necessary to cause such report or any such memorandum to be laid before the Legislative Assembly of the State of "Uttaranchal" appears to be that the UPPSC not being a joint Commission and it being a Public Service Commission for the State of Uttar Pradesh under Section 2(e) read with Section 78(1) of the Act, its report could not be placed before the State Legislature of Uttaranchal. State of Uttaranchal was not in existence when the UPPSC initiated the selection process for the posts in question and no functions could be rendered by pre-existing UPPSC in respect of new State of Uttaranchal. It was contended that UPPSC sent the report to the Governor of Uttaranchal as required under Section 78; there was no prohibition from placing the said report and memorandum containing explanation before the State Legislature of Uttaranchal. We find it difficult in accepting this contention having due regard to the language and contents of Section 78(4) of the Act. A clear distinction can be seen in the said provision. First part of the provision speaks of UPPSC sending the report to both the Governors and second part requires the Governor of Uttar Pradesh alone to cause the report and the memorandum to be laid before the Legislature of State of Uttar Pradesh only. The express parliamentary intention that such a report need not be laid before the Legislative Assembly of the State of Uttaranchal makes the position clear that the report of the UPPSC is not binding upon the State of Uttaranchal. The State of Uttaranchal

would have to constitute its own Public Service Commission to meet the constitutional requirement for the purpose of discharging its duties under Article 315. Further, appointment to services in the State of Uttaranchal shall have to be in consonance with Articles 315, 320 and 323 of the Constitution consistent with autonomy and the freedom of executive action enjoyed by newly born State of Uttaranchal. Part VIII of the Act contains Sections 72 to 78 dealing with services; Section 72 relates to All-India Services and Sections 73 to 76 with other services; Section 77 gives power to Central Government to give directions. Provisions are made in Section 78 as to the State Public Service Commission. In this Part, provisions are made for protection of service conditions and services of the persons already in service. There is no such provision made in Section 78 protecting the selection made by the UPPSC prior to the formation of the new State of Uttaranchal to contend that the candidates selected by the UPPSC shall be appointed by the State of Uttaranchal. Under these circumstances, the communication of the Government of Uttar Pradesh or UPPSC forwarding list of selected candidates to the appellant-State has no legal sanctity or force to bind the State of Uttaranchal so as to compel it to appoint the non-official respondents.

19. The argument made on behalf of the respondents that the State cannot add fresh reasons to the impugned order dated 29.8.2001 subsequently in the shape of affidavit or otherwise and that when a statutory functionary makes an order based on certain grounds, its validity must be judged only by the reasons so mentioned citing the case of *M.S. Gill and Anr. v. Chief Election Commissioner, New Delhi and Ors.* is not acceptable.

20. The said order reads:-

"No. 1358/Personnel-2/2001 From:

Rakesh Sharma Secretary, Government of Uttaranchal To, All the Principal Secretaries/ Secretary, Govt. of Uttaranchal Personnel Deptt. Dehradun Dated 29th August, 2001 Subject: Action to the recommendations of the Public Service Commission, U.P. for appointments in various departments. Sir, I have been directed to state that after constitution of the State of Uttaranchal, the Govt. of Uttar Pradesh has sent the recommendations of the selected candidates by the Public Service Commission, U.P. Allahabad for appointment to the various posts in various departments of the Government of Uttaranchal. The said recommendations have been sent keeping in view the departmental constitution and reservation position of the earlier state of Uttar Pradesh, whereas after constitution of the State of Uttaranchal the reservation policy has been changed. In such a situation, there will be various miscellaneous legal difficulties in giving appointments to the candidates, list of which has been sent by the Govt. of Uttar Pradesh in accordance with the recommendations.

2. Therefore, in this regard after thorough consideration it has been decided that the candidates recommended by the Uttar Pradesh Public Service Commission may not be appointed in various departments of the Government of Uttaranchal.

3. Therefore it is requested to take further action accordingly.

Yours faithfully, Sd/-illegible (Rakesh Sharma) Secretary No. (1) Personal-2/2001 of even dated
Copy forwarded for information and necessary action to:-

1. The Secretary of His Excellency the Governor of Uttaranchal.
2. The Secretary, Reconstitution, Govt. of Uttaranchal.
3. The Commissioner of Reconstitution, Govt. of Uttaranchal, Lucknow.
4. The Secretary, Co-ordination, Govt. of U.P. Lucknow.
5. All the Sections of the Secretariat, Uttaranchal.
6. Department Book.

By Order (Rakesh Sharma) Secretary"

21. It is evident from the above order that the consideration was made in regard to the action to be taken on the basis of the recommendations of the Public Service Commission, U.P., for appointments in various departments. It is also stated therein that after the constitution of the State of Uttaranchal, the reservation policy has been changed and there will be various miscellaneous legal difficulties in giving appointments to the candidates, list of which has been sent by the Government of Uttar Pradesh in accordance with the recommendations of UPPSC. In conclusion, it is said that after thorough consideration, it has been decided that the candidates recommended by the Uttar Pradesh Public Service Commission may not be appointed in various Department of the Government of Uttaranchal. it is true that there is no express reference to Section 78(4) of the Act in the aforementioned order. But reading the order as a whole, it gives an impression that after the Constitution of the State of Uttaranchal, there has been change in the reservation policy; there were various miscellaneous and legal difficulties in giving appointments to the candidates selected by the UPPSC as forwarded by the Government of Uttar Pradesh and that after thorough consideration, a decision was taken not to appoint the candidates recommended by the UPPSC in various departments of the Government of Uttaranchal. This being the position, it appears to us that while passing the order, the provision of Section 78(4) and other provisions of the Act and the relevant constitutional provisions were kept in mind when there was thorough consideration before taking a decision as stated in the order. Mere non-reference or omission to mention of Section 78(4) in the order, does not take away its legal effect. The appellants have only elaborated the reasons to support the said order. It is not possible to agree that the appellants tried to justify the aforementioned order by subsequent fresh reasons. The High Court committed an error in holding that the reasons cited by the State Government of Uttaranchal in the order dated 29.8.2001 were not valid relying on the decision of this Court in Asha Kaul (Mrs.) and Anr. v. State of Jammu & Kashmir and Ors. [(1993) 2 SC 573], in the light of the facts of the present case and in view of what is stated above. This apart, in view of the discussion made above and having regard to clear constitutional and legal position that

the selections made by UPPSC are not binding on the State of Uttaranchal on the basis of the facts that are not in dispute, the argument advanced on behalf of the respondents being devoid of merit is rejected.

22. In terms of Section 86 of the Act, it was argued that the reservation policy of the State of U.P. is embodied in the Uttar Pradesh Service (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, the executive decision dated 29.8.2001 cannot override the U.P. act of 1994 (supra) because the State Act continues to remain in force in Uttaranchal by virtue of the Section 86 of the Act. Assuming that be the position, as and when Uttaranchal State Public Service Commission proceeds to make selection, the policy contained in the U.P. Act of 1994 is to be followed unless it is amended by the Legislature of the State of Uttaranchal. It cannot also be contended that the State of Uttaranchal has no right to have its own reservation policy to meet the requirements of the new State having due regard to various factors. Moreover, when the selection made by the UPPSC itself, as already stated above, is not for the State of Uttaranchal and it has no legal or binding effect to compel the State of Uttaranchal to appoint the selected candidates, the question of applying reservation policy as embodied in U.P. Act of 1994 does not arise. Consequently, this contention also fails.

23. The other contention that the affidavit of the U.P. Government shows that it had accepted the recommendations of the UPPSC, the letter of Chief Engineer, Uttaranchal, PWD, Almora dated 4.1.2001 referring to the letter of UPPSC dated 30.10.2000 to the Chief Engineer, PWD and the letter dated 7.11.2000 of UPPSC to the Chief Engineer, Almora being prior to the formation of the new State of Uttaranchal, no further acceptance of the Uttaranchal Government was required. In view of the discussion already made above that the UPPSC recommendations in relation to selection of the candidates have no legal force and are not binding on the State of Uttaranchal, we find no merit in this contention as well. It may also be added here itself that a person placed in the merit list of selected candidates has no indefeasible right to be appointed as held by this Court. No doubt, there cannot be an arbitrary refusal to appoint a selected candidate. In the instant case, the action of the State of Uttaranchal must be judged with reference to the creation of new State and its functions, obligations and duties to make appointments to the public services within the State on the basis of the recommendations of the Public Service Commission of the State. As is clear from the facts in the present case, there was no advertisement by the State of Uttaranchal, no rules were framed by the State of Uttaranchal, no selection was made by Public Service Commission for the State of Uttaranchal. Hence, the State of Uttaranchal was not obliged to make appointments of the non-official respondents on the basis of the selection made by the UPPSC even though the recommendations were forwarded to the State of Uttaranchal. On the facts it is not a case where the Government of Uttaranchal has refused to make appointment arbitrarily.

24. A grievance was made that Uttaranchal Government has been making appointments arbitrarily picking up some candidates selected by the UPPSC even after the U.P. State was re-organised and is not making appointments of other candidates selected by the UPPSC; there is lack of bona fides on the part of the State of Uttaranchal in making the order dated 29.8.2001. If any appointments are made contrary to law and the stand taken by the State of Uttaranchal and if there is any mala fide, they may affect such appointments on a proper challenge by the aggrieved persons but that does

not help the non-official respondents to get them appointed by the State of Uttaranchal.

25. It was also urged on behalf of the non-official respondents that the selection and appointment has to be made in accordance with the rules in force at the time of initiation of the selection process, i.e. publication of advertisement and, therefore, change of reservation policy subsequent to the selection cannot come in the way of earmarked vacancies for the Hill Region of U.P. which became an integrals part of the State of Uttaranchal. This is an untenable grievance in view of the discussion made above while dealing with the question whether the selection made by UPPSC is binding on the State of Uttaranchal. The rules in force at the time of initiation of the selection process have to be applied in making selection but that does not help the non-official respondents in seeking appointments by the State of Uttaranchal on the basis of selection made by UPPSC.

26. It was also urged that if there were vacancies and the candidates were selected in accordance with the law by UPPSC and there was urgent need to fill up the said vacancies, it is wholly arbitrary on the part of the appellants not to fill up the vacancies by the candidates recommended by the UPPSC and going in for fresh recruitment. This submission is again without any force in law. When we have already held that the selection made by UPPSC is not binding on the State of Uttaranchal, no direction could be given to appoint the non-official respondents as is done by the High Court in the impugned judgment.

27. In the impugned judgment the High Court held that the recommendations of Public Service Commission of erstwhile State of Uttar Pradesh for appointment on the posts under Hill Sub Cadre Rules, 1992, which were received prior to the appointed day by the State Government of erstwhile State of Uttar Pradesh, are binding on the State of Uttaranchal, and, in that view, directed the appellants to give appointments to the candidates selected and recommended by the UPPSC. The reasons recorded by the High Court in doing so are:-

1. From the Government Order dated 29.8.2001, it is clear that the Government of Uttaranchal denied to accept the recommendations of UPPSC. It does not say that no appointment shall be given on the basis of recommendations of UPPSC. Therefore, the said Government Order is liable to be ignored for the purpose of giving appointment on the recommendations of UPPSC and in that view there was no need to quash the said Government Order.
2. There is yet another reason for not quashing the said Government Order as the same has been issued after the appointed day and the State of Uttaranchal has established its own Public Service Commission. Now the appointments are to be made in consultation with Uttaranchal Public Service Commission as per the changed policy mentioned in the Government Order.
3. In view of a Constitution Bench judgment of this Court in *Shankarasan Dash v. Union of India* and Division Bench judgment of this Court in *Asha Kaul (Mrs.) and Ors. v. State of Jammu and Kashmir and Ors.*, though no indefeasible right for appointment can be claimed on the basis of recommendations made by the Public

Service Commission but equally the Government has n absolute right to reject the recommendations and to refuse appointment to the recommended candidates; there has to be valid and reasonable ground for not accepting the recommendations of the Public Service Commission for appointment on the posts for which the selection was held by the Commission.

4. Though the impugned order dated 29.8.2001 was to be ignored the reasons stated there for not accepting the recommendations of the Commission are not valid reasons as those reasons were not the reasons for not accepting the recommendations of the Public Service Commission.

5. The recommendations were made by the UPPSC and were duly received by the State Government of erstwhile State of Uttar Pradesh prior to the appointed day. The recommendations were made strictly in accordance with the Rules then prevailed prior to the appointed day. Under Section 78 of the Act, in case of non acceptance of the recommendations of the Commission the Governor of Uttar Pradesh had to place the report before the Uttar Pradesh Legislative Assembly for not accepting the recommendations. Admittedly, all the recommendations received by the erstwhile State of Uttar Pradesh have been sent to the State of Uttaranchal and they were not reversed by the Governor for being placed with reasons before the Assembly of the State of Uttar Pradesh.

28. The High Court misread the Government Order dated 29.8.2001 and drew wrong inference in saying that the Government of Uttaranchal denied acceptance of the recommendations but did not say that no appointment shall be given on the basis of the recommendations of UPPSC. If the Government of Uttaranchal has denied to accept the recommendations of UPPSC, essentially it follows that no appointment could be given. This apart in the very order in paragraph 2 it is specifically stated that "therefore, in this regard after thorough consideration it has been decided that the candidates recommended by the UPPSC may not be appointed in various departments of the Government of "Uttaranchal". Thus, the reasons given by the High Court that the Government of Uttaranchal though denied to accept the recommendations of UPPSC but did not deny to give appointment and as such the said Government Order could be ignored, does not stand to reason and it is untenable.

29. The other reason given to ignore the said Government Order is that the same was issued after the appointed day. Merely because the said Government Order was issued after the appointed day it could not be simply ignored without considering the legality and validity of that order, in the light of the relevant constitutional provisions and provisions of the Act. The order exists unless it is quashed or it ceases to operate for any other reason.

30. There is no difficulty in accepting the principles laid down in the cases of Shankarsan Dash and Asha Kaul (Mrs.) (supra). But the High Court failed to apply those principles correctly to the facts of the present cases. As stated by the High Court it is settled law that a candidate whose name is included in the select list does not get indefeasible right for appointment on the basis of the

recommendations made by the Public Service Commission, but at the same time the Government has no absolute right to reject the recommendations and refuse appointment to the candidates recommended without a valid and reasonable ground for not accepting the recommendations of UPPSC. The High Court found that the reasons given in the Government Order dated 29.8.2001 were not valid reasons for not accepting the recommendations of UPPSC. While discussing whether the recommendations of UPPSC are binding on the State Government of Uttaranchal, keeping in view the constitutional provisions and in particular Section 78(4) of the Act, we have already expressed above that the recommendations of the UPPSC are not binding to compel the State of Uttaranchal to give appointments to the candidates recommended by the UPPSC. It is not possible to accept the view of the High Court that the reasons given in Government Order dated 29.8.2001 are not valid. On the other hand, we find that the reasons given in the said order are valid and reasonable. At any rate it cannot be said that the State of Uttaranchal arbitrarily or whimsically refused to give appointments to the selected candidates.

31. The interpretation placed by the High Court on Section 78 of the Act is also wrong. Merely because the recommendations received by the erstwhile State of Uttar Pradesh had been sent to State of Uttaranchal and they were not reversed by the Governor for being placed with the reasons before the Assembly of State of Uttar Pradesh under Section 78 of the Act, it cannot be held that the recommendations made by the UPPSC were binding on Government of Uttaranchal. In this regard we have already made the legal position clear. Hence it is unnecessary to deal with the same any further. In our view, looking to the reasons recorded by the High Court in the impugned judgment, which are neither tenable nor acceptable, the impugned judgment cannot be allowed to stand.

32. It was also urged in the alternative that the State of Uttar Pradesh may be directed to give appointments to the non-official respondents. This aspect was neither raised before the High Court nor it was considered. Hence, we do not wish to deal with the same. All that we can say is that this order shall not come in the way of the State of Uttar Pradesh, if so advised, to consider the claims of the non-official respondents for appointments based on the selection made by UPPSC. Having regards to the peculiar situation in which the non-official respondents are placed, we would like to say that in case the non-official respondents apply as and when the applications are invited for selection either by UPPSC or by the Uttaranchal State Public Service Commission in future within a period of three years, the UPPSC or the Uttaranchal State Public Service Commission shall consider them for selection subject to their satisfying all other eligibility requirements but relaxing the upper age limit.

33. Having due regard to all aspects and in the light of what is stated above, the question set out in the beginning is answered in the negative. Hence the impugned judgment and order of the High Court cannot be sustained. In this view, we find merit in these appeals. They are entitled to succeed. Accordingly, the impugned judgment and order are set aside and the appeals are allowed but with no order as to costs.