Sarwan Singh Lamba & Others vs Union Of India & Others on 12 May, 1995

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Author: A.M Ahmadi

Bench: A.M Ahmadi, N.P Singh, Jagdish Saran Verma, P.B. Sawant, B.P. Jeevan Reddy

PETITIONER:
SARWAN SINGH LAMBA & OTHERS

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT12/05/1995

BENCH:
AHMADI A.M. (CJ)
BENCH:
AHMADI A.M. (CJ)
SINGH N.P. (J)
VERMA, JAGDISH SARAN (J)
SAWANT, P.B.
JEEVAN REDDY, B.P. (J)

CITATION:
1995 AIR 1729 1995 SCC (4) 546
JT 1995 (5) 386 1995 SCALE (3)457

ACT:

HEADNOTE:

JUDGMENT:

W I T H CIVIL APPEAL NO.5062 OF 1993 R.P. Kapoor ...Appellant versus Union of India & Others ...Respondents W I T H CIVIL APPEAL NO. 5511 OF 1995 (Arising out of SLP(C) No.17232 of 1993) The Industrial & Labour Bar Association Bhopal & Another ..Appellants versus Union of India & Others ...Respondents A N D CIVIL APPEAL NO.7486 OF 1993 Union of India ...Appellant versus Daulat Singh & Others ...Respondents J U D G M E N T AHMADI, CJI This group of cases arise out of the judgment/order dated 29.7.1993 in Miscellaneous Petition No.1102/91 passed by High Court of Madhya Pradesh (Indore Bench). The three petitioners before the High Court were working on the post of Inspectors in the Police Department of Madhya Pradesh. They sought to challenge the Constitution of the State Administrative Tribunal (in short 'SAT') as well as the appointments of the Vice-Chairman and Members of the Tribunal as the Government had not complied with the direction of this Court given in the case of S.P. Sampath Kumar v. Union of India (1987)1 SCC 124 = AIR 1987 SC 386 to amend the Administrative Tribunals Act, 1985 (hereinafter alluded to as `the Act') as suggested by it and had not made the appointments after selection by a High Powered Selection Committee as directed by the court. They stated that they could not obtain a copy of the appointment letter of the aforesaid persons. They prayed for Writ of Quo Warranto to show under what authority they were functioning and for a declaration that the constitution of SAT was null and void. The respondents Nos.3 to 6 were Members of the SAT and respondent No.7 was its Vice-Chairman. The respondent Nos.1 and 2 were the Union of India and the State of Madhya Pradesh, respectively. The High Court quashed the appointments of the respondents Nos.3 to 7 by the impugned judgment dated 29.7.1993. The respondents Nos.3 to 6 jointly challenge the judgment in Civil Appeal No.5061 of 1993. The appeal filed by the respondent No.7 is Civil Appeal No.5062 of 1993. The Union of India also challenges the judgment in Civil Appeal No.7486 of 1993. The Industrial & Labour Bar Association, Bhopal and another who claim to have been intervenors before the High Court have come up with a special leave petition (civil) No.17232 of 1993. We grant them special leave.

Shri R.P. Kapoor, whose appointment as Vice-Chairman and S/Shri Dr. Narinder Nath Veermani, R.M. Rajwade, G.S. Patel and S.S. Lamba whose appointments as members were set aside by the High Court are referred to in this judgment as the appellants whereas the three police officers who filed the writ petition before the High Court are being referred to as the original petitioners.

The main reason for setting aside the appointments was the alleged failure on the part of the Government to select the candidates for the posts of members and Vice-Chairman of the Tribunal through a High Powered Selection Committee as directed by this Court in S.P. Sampath Kumar's case (supra) and in the review petitions filed subsequently, vide (1987) Supp. SCC 734 and 735. By the judgment in S.P. Sampath Kumar's case (supra) certain directions were issued to the Union of India to introduce legislative changes to cure the defects in the procedure for appointment of the Chairman, Vice-Chairman and Member of the Tribunal. An amendment was made in Section 6 of the Act purportedly in compliance with the direction of this Court. The High Court of Madhya Pradesh has held that the amendment was not in conformity with the direction of this Court and did not suffice to ensure the validity of the appointments challenged in the writ petition before it. The appeals were heard by a bench of this Court consisting of M.M. Punchhi, S.C. Agrawal, B.P. Jeevan Reddy, JJ. By an order dated 3.5.1994 the court referred the matters to the Constitution Bench on the observation that they raised questions of general importance involving the interpretation of the

provisions of Section 6 as amended by Act 51 of 1987 as well as the validity of the appointments made in accordance with the said provisions and that the issues affect the constitution of the CAT and the SAT.

On the pleadings and submissions made before the High Court, the points arising for determination came to be formulated in paragraph 7 of the judgment. These comprised preliminary objections as to (i) bar of jurisdiction in view of Section 28 of the Act (ii) propriety of entertaining such a petition by disgruntled litigants in the guise of public interest litigation and (iii) locus standi of the petitioners. The other technical objection raised was in regard to the scope of a petition seeking a writ of quo warranto. None of these objections was pressed before us. The High Court next considered the ambit and import of the observations made by this Court in S.P. Sampath Kumar's case and in the subsequent orders emanating from that decision. Based on the import of the said observations the High Court went into the question whether the appointments of the Vice-Chairman and Members were validily made. The High Court on appreciation of the decision in S.P. Sampath Kumar and related cases came to the conclusion that the appointment of a High Powered Committee was a sine qua non under the said decisions and the mere fact that the Chief Justice of India had approved the appointments on the administrative side would not render the appointments valid. Detailing the procedure followed in the matter of selection, the High Court after referring to the notings in the department file held the same to be arbitrary and discriminatory and even went to the length of describing the same as 'murky', 'self- motivated' and 'biased' and in total violation of the procedure prescribed by the Government of India under its order of 15th April, 1991 and consequently quashed the appointments. The petitions were allowed with cost quantified at Rs. 2,500/-.

The main question is whether the mode of selection and appointment of the Chairman, Vice-Chairman and Members of the Tribunal as prescribed by the amendment of 1987 is valid? The Amendment Act of 1987 followed the judgment of this Court in S.P. Sampath Kumar's case (supra) in which certain infirmities were pointed out in the Administrative Tribunals Act, 1985, (hereinafter referred to as 'the Act') and certain directions were given for introducing legislation to cure those defects. What this Court was required to consider in that case was whether constitution of the Administrative Tribunals under the Act, which excluded the jurisdiction of the High Courts, was inconsistent with the concept of judicial review, a basic feature of the constitution. Recalling the law laid down in Minerva Mills Ltd. v. Union of India AIR 1980 SC 1789, Bhagwati, J., said:

> "...judicial review is a basic and essential feature of the constitution and it cannot be abrogated without affecting the basic structure of the Constitution and it is equally clear from the same decision that though judicial review cannot be altogether abrogated by Parliament by amending the Constitution in exercise of its constituent power, Parliament can certainly, without in any way violating the basic structure doctrine, set up effective alternative institutional mechanisms or arrangements for judicial review. The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than

the High Court..."

Referring to Article 323A, the learned Judge observed:

> "If this constitutional amendment were to permit a law made under clause (1) of Article 323 A to exclude the jurisdiction of the High Court under Articles 226 and 227 without setting up an effective alternative institutional mechanism or arrangement for judicial review, it would be violative of the basic structure doctrine and hence outside the constituent power of Parliament. It must, therefore, be read as implicit in this constitutional amendment that the law excluding the jurisdiction of the High Court under Article 226 and 227 permissible under it must not leave a void but it must set up another effective institutional mechanism or authority and vest the power of judicial review in it. Consequently, the impugned Act excluding the jurisdiction of the High Court under Articles 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit and coverage of clase (2) (d) of Article 323A, only if it can be shown that the Administrative Tribunals set up under the impugned Act is equally efficacious as the High Court so far as the power of judicial review over service matter is concerned. We must, therefore, address ourselves to the question whether the Administrative Tribunal established under the impugned Act can be regarded as equally effective and efficacious in exercising the power of judicial review as the High Court acting under Articles 226 and 227 of the Constitution."

The majority judgment in S.P.Sampath Kumar's case (supra) delivered by Misra, J. also expressed the same view in these words:

> "What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court not only in form and de jure but in content and de facto. As was pointed out in Minerva Mills (AIR 1980 SC 1789) the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations."

The next step was to consider how to ensure that the Tribunal was a 'real substitute' of the High Court. It was observed that the things to be examined were whether the judges of the Tribunal were equally efficient/trained and equally independent as those of the High Court. Said Misra, J. :-

> "Disciplined, independent and trained judges well versed in law and working with all openness in an unattached and objective manner have ensured dispensation of justice over the years. Aggrieved people approach the court - the social mechanism to act as the arbiter - not under legal obligation but under the belief and faith that justice shall be done to them and the State's authorities would implement the decision of the Court. It is, therefore, of paramount importance that the substitute institution - the Tribunal - must be a worthy successor of the High Court in all be a worthy successor of the High Court in all respects. That is exactly what this Court intended to convey when it spoke of an alternative mechanism in Minerva Mill's

case."

The Court then proceeded to examine the competence and independence of the Members, Vice-Chairman and Chairman of the Tribunal. The Court struck down Section 6(1) (c) of the Act which prescribed that a person who for atleast two years held the post of a Secretary to the Government of India or other equivalent post will also qualify to be the Chairman of the Tribunal. This has no bearing on the facts of the Present case. What is relevant for us is how the court viewed the question so as to ensure independence of the Members as well as of the Chairman and Vice-Chairman of the Tribunal. The Act already had a provision that the judicial members would be appointed only in consultation with the Chief Justice of India but for the Administrative members as well as for the Chairman and Vice-Chairman, no such provision was made, thereby giving unfettered discretion to the Government to make such appointments. It is in this context that the court laid down the mode of their selection. To quote from the judgment of Misra, J.:-

> "We do not want to say anything about Vice-Chairman and members dealt with in sub-sections (2), (3) or (3A) because so far as their selection is concerned we are of the view that such selection when it is not of a sitting judge or retired judge of a High Court should be done by a high powered committee with a sitting judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. This will ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability."

The Court desired amendments to bring the provisions in accordance with the observations made in the judgment and hoped that the amendments would be brought about by 31.3.1987.

Bhagwati, J. in his judgment considered the method of appointment of the Judges of the High Court, i.e. appointment by the Government in consultation with the Chief Justice of India and observed:-

> "Obviously, therefore, if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from the possibility of executive pressure or influence must also be ensured to the Chairman and memebers of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. I am, therefore, of the view that the appointment of Chairman, Vice-Chairman and Administrative members should be made by the concerned Government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective....".

The method suggested by Misra,J. was also accepted by Bhagwati,J. as an alternative for ensuring independence of the Chairman, Vice-Chairman and Members of the Administrative Tribunals but with a little modification. Bhagwati,J. advised setting up of a High Powered Selection Committee "headed by the Chief Justice of India, or a sitting judge of the Supreme Court or concerned High

Court nominated by the Chief Justice of India." Said the learned Judge:

> "Both these modes of appointment will ensure selection of proper and competent persons to man the Administrative Tribunal and give it prestige and reputation which would inspire confidence in the public mind in regard to the competence, objectivity and impariality of those manning the Administrative Tribunal. If either of these two modes of appointment is adopted, it would save the impugned Act from invalidation. Otherwise, it will be outside the scope of the power conferred on Parliament under Article 323- A. I would, however hasten to add that the judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunal."

The amendment that has been brought about in Section 6(7) by Act 51 of 1987 is to the effect that the appointments to the post of Chairman, Vice-Chairman and Members shall not be made except after consultation with the Chief Justice of India.

It needs to be mentioned here that the Central Government, in view of the discrepancy in the views expressed by the two learned judges, sought clarification by filing a review petition which was decided by an order dated 5.5.1987 reported in (1987) Supp. SCC 734. The Court ordered:

> "Having considered the matter carefully we are of the opinion that in the case of recruitment to the Central Administrative Tribunal the appropriate course would be to appoint a High Powered Selection Committee headed by a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India, while in the case of recruitment to the State Administrative Tribunals, the High Powered Selection Committee should be headed by a sitting Judge of the High Court to be nominated by the Chief Justice of the High Court concerned."

The Central Government yet again filed review petitions Nos. 520-23 of 1987 seeking modification of the court's order to the effect that consultation with the Chief Justice of India alone be prescribed as sufficient because selection by a High Powered Selection Committee was likely to be time consuming. The review petitions also prayed for extension of time for bringing about the amendments. It appears from the order reported in (1987) Supp. SCC 737 that the court did not make any order on the prayer for modification of the order although it granted extension of time prayed for. Two questions that confront us at this stage are:

> (a) Whether the direction to set up a High Powered Selection Committee was mandatory or simply advisory in nature; and
>
> (b) Whether non compliance of the direction in making the amendment vitiates the amendment;

The judgment, carefully read, clearly indicates that the direction for setting up a High Powered Selection Committee was merely advisory and not mandatory in character. The Act originally

provided that the judicial members were to be appointed after consultation with the Chief Justice of India. Neither Bhagwati,J. nor Misra, J. has found fault with it. Bhagwati,J. indicated that since there is no such provision for the selection/appointment of the Chairman, Vice-Chairman and Administrative Members, there was a risk that they would not be independent of executive influence. Hence Bhagwati,J. suggested that the Chairman, Vice-Chairman and Administrative Members should also be appointed only after consultation with the Chief Justice of India. Misra,J. suggested appointment of the High Powered Selection Committee for all including the judicial members without indicating why selection after consultation with the Chief Justice of India was not acceptable. Obviously, Misra,J. did not discard the method of selection of judicial members after consultation with the Chief Justice of India. Nor did Bhagwati, J. Even in the orders passed on the review petitions no observation against appointments after consultation with the Chief Justice of India was made.

The Court was confronted with the problem of ensuring independence of the personnel of the Tribunal. There could be several ways of ensuring such independence. Bhagwati,J. mentioned two such methods while Misra,J. advocated one. In the review petition again the Court altered the constitution of the High Powered Selection Committee by saying that it should be headed by a Supreme Court Judge when selecting the members of the Central Administrative Tribunal but by a High Court judge when seleclting the members of the State Administrative Tribunals. Coming to selection of the Members of the High Powered Selection Committee itself, the Court did not make any suggestion or order. It cannot be disputed that many other methods for selection to ensure independence of the personnel of the Tribunal could be suggested. The Court itself considered some of the possible modes and preferred the one mentioned in the order in review reported in (1987) Supp. SCC 734. In the subsequent review petition in which the Government again wanted only consultation with the Chief Justice of India to be accepted as the method of selection of the candidates the Court did not reiterate the previous decision. Nor did it say that the appointment after consultation with the Chief Justice of India was not acceptable. It ordered as under :

> "In view of what has been stated before us by the learned Attorney General of India, we extend the time granted to the Union of India upto January 31, 1988 for introducing necessary changes in the statute through legislative enactment in Parliament or by issuing a Presidential Ordinance. We trust it will not be necessary now for the Union of India to seek any further extension of time as this matter has been pending for a long time. The civil miscellaneous petitions are disposed of accordingly."

On behalf of the Union of India it is submitted that the previous order regarding the High Powered Selection Committee stood modified by this order and the Government accordingly introduced the Amending Act only to make provision for consultation with the Chief Justice of India. Although it cannot be said that the prayer of the Union of India to introduce the provision to consult the Chief Justice of India in preference to the High Powered Selection Committee was allowed by the court, it can be perceived that the court itself did not reject the prayer or reiterate the previous suggestion. That means the view expressed in the order dated 5.5.1987 stood unaltered.

Now we come to the next question, viz., whether non- compliance with the direction regarding the High Powered Selection Committee vitiates the amendment. Normally even an obiter dictum is expected to be obeyed and followed. In our view further discussion would be purely academic for the simple reason that without amending Section 6(7) the dicta of the Court has in fact been made effective by the appointment of High Powered Selection Committees both at the Central level as well as the State levels with minor modifications. Since these Committees are now expected to make the choice of candidates whose names may be recommended to the Chief Justice of India for final approval, the order of 5.5.1987 is fully complied with. Of course, names may be suggested to the Committee by any source but the ultimate decision has to be taken by the Committee and if the Chief Justice of India is not personally heading the Committee, the final decision would have to be taken by him on the recommendation of the Committee. It would, thus, be seen that without amending Section 6(7), the Government has given effect to the Court's view expressed in the order dated 5.5.1987 which renders the challenge academic and unnecessary to examine.

The next question is what was the scope of the enquiry before the High Court? In para 2 of the impugned judgment the High Court has disclosed that the petitioners challenged the validity of the appointments of the appellants as they were made in violation of the direction of this Court given in S.P. Sampath Kumar's case. The petitioners added at the time of hearing, as can be seen from para 4 of the impugned judgment, a plea that instead of selection, the appointments were made by nomination without considering all eligible and available candidates so that the best amongst them could be selected.

The Government of India as well as the Government of Madhya Pradesh placed before the High Court the files relating to the impugned appointments. The High Court has gone into a detailed analysis of how the proposal for appointment of the appellants was mooted and how the same was processed right upto the then Chief Justice of India. The High Court observed that the entire procedure was fraudulent not only because of the Government's failure in bringing about a proper amendment but also because of the failure on the part of Government of Madhya Pradesh to select the candidates through a Selection Committee appointed by the Government of India on 15.4.1991. Admittedly, intimation thereof was given to the State Governments by letter dated 19.4.1991. The High Court further observed that even the appointment of the Selection Committee was not in accordance with the order of this Court which provided for appointment of a High Powered Selection Committee. However, the Selection Committee constituted by the Government of India comprised only the Chief Justice of the High Court, the Chief Secretary and the Law Secretary.

The High Court on an analysis of the various notes on the Government files observed that the appellants R.P.Kapur and G.S.Patel used their own influence as Chief Secretary and Law Secretary to get themselves appointed on the State Administrative Tribunal and, therefore, their appointments were fraudulent. The appellants pointed out that the High Court committed serious errors in appreciating how the selection process moved. In fact when the High Court examined the files of the Government, the hearing had concluded on 16.12.1992 and the appellants had no opportunity to explain the various notes on the files since the same were produced in Court on 29.7.1993. This itself was against the rules of natural justice. Moreover, the applicants did not allege that the appointments had been secured by the appellants by practising fraud on the Government and were,

therefore, bad. Was it open to the High Court to enter upon an enquiry of this nature within the ambit of the writ jurisdiction?

It is not in dispute that all the appellants were duly qualified and eligible for the posts against which they had been appointed. There is no allegation that any of them was not suitable for any reason whatsoever. All of them had been appointed after consultation with the then Chief Justice of India. There was no violation of any law in the process of their appointments.

The judgment in S.P.Sampath Kumar's case was delivered in 1987. In that very year, the Act had been amended in compliance with the judgment. The Selection Committee was appointed only on 15.4.1991. This was communicated to the State Government on 19.4.1991. In the order dated 15.4.1991, as quoted in the impugned judgment, there is no reference to the judgment of this Court. As such although it can be said that this order of appointment of the Selection Committee must have been inspired by the judgment, it cannot be said that this was solely in obedience to the order of this Court. It is clear, as observed by the High Court, that the Selection Committee was not a High Powered Committee. As such failure to process the appointments through the Selection Committee will not mean non-compliance with any order of this Court or of any statutory provision. We must not lose sight of the fact that the Government of India itself, despite such order of appointment of Selection Committee, approved the proposals for appointment. In fact the appointments of the appellants other than that of R.P.Kapur had already been approved by the Chief Justice of India before the appointment of the Selection Committee was communicated to the State Government. On 15.4.1991 itself the file with the proposal of the appointments was sent to the Chief Justice of India with the approval of the Prime Minister mentioning further that in view of the Supreme Court order of 9.4.1991 in Writ Petition No. 497 of 1990 Shailendra Kumar Gangrade & Anr. vs. Union of India & Ors. for making appointments in State Administrative Tribunal within four weeks time, the matter was urgent. The then Chief Justice of India accorded his approval on 18.4.1991 to the appointments of Messrs Lamba, M.N. Virmani, G.S. Patel and Rajwade. It would not be proper to say that because on 15.4.1991 the Government of India constituted the Committee for selection which was not even communicated to any State Government till 19.4.1991, the approval granted by the then Chief Justice of India be set at naught and the whole process of selection/nomination be redone.

So far as appellant R.P.Kapur is concerned, the Selection Committee could not be ignored. His name was proposed by the Chief Minister himself on 27.4.1991. The proposal was approved by the Government on 30.4.1991. Subsequently, however, the Secretary, General Administrative Department, noted that the proposal had to be sent to the Selection Committee. It was further noted by him on the file that the Chief Secretary himself being the candidate proposed could not be associated with the Selection Committee. The Committee, therefore, of necessity comprised only of the Chief Justice of the High Court of Madhya Pradesh and the Law Secretary. The Chief Justice approved the name of R.P. Kapoor when the file was presented to him by the Law Secretary himself. The Law Secretary's note itself mentions constitution of the Committee as also his own approval to the proposal to appoint R.P. Kapoor as the Vice-Chairman. The High Court, in the impugned order has observed that the Chief Justice was not told about the appointment of the Selection Committee. This is, however, not borne out from any record. It has to be presumed that in the usual course of business the Chief Justice had gone through the entire file before according his approval to the

proposal to appoint R.P.Kapoor as the Vice-Chairman of the State Administrative Tribunal, Madhya Pradesh. Out of the three members of the Selection Committee, one, being the candidate himself, could not participate in the selection process. The other two, namely, the Chief Justice of the High Court and the Law Secretary approved the name of R.P.Kapoor. It cannot be said that merely because the name of R.P.Kapoor was mooted by the Chief Minister, the subsequent approval by the members of the Selection Committee was bad. It may be said at the cost of repetition that there is no averment that there was anyone more suitable than R.P.Kapoor for the post of the Vice-Chairman who was deliberately ignored by either the Chief Minister or the Selection Committee or the State Chief Justice. Nor is there any averment that for some reason R.P.Kapoor should not have been appointed the Vice-Chairman of the Administrative Tribunal. The finding of the High Court that the appointments of R.P. Kapoor and G.S.Patel were vitiated because their appointments were the result of their own machination cannot be upheld. Nor can it be said that their appointments were fraudulent or otherwise vitiated. This High Court seems to have read too much from the notes on the file and, with respect, has drawn unsustainable and wholly unwarranted inferences based on, if we may say so, suspicion.

Before we part we would like to make a few general observations. As has been pointed out earlier long after the hearing had concluded the Court had called for the files which were produced on 29.7.1993. The Court inspected the files and has drawn its own conclusions on the basis of the notings without giving the parties, the appellants, against whom the inferences were drawn any opportunity to explain the same. This was clearly in violation of the basic rule of natural justice. The Court should have been extra cautious since it was casting serious aspersions against the appellants, particularly, R.P.Kapoor. As we shall briefly point out, the conclusion that " the appointments ..... are result of murky self-motivated machinations" and are, therefore, "vitiated by bias", is not borne out from the material relied on by the High Court. In the first place it must be remembered that the original petitioners had filed writ petitions in the High Court wherein they had sought an interim order against their repatriation to their parent department. On the constitution of the Tribunal their writ petitions were transferred to the Tribunal. The Government had moved an application for vacating the interim order and apprehending that the stay may be vacated, they challenged the constitution of the Tribunal. The idea was to paralyse the Tribunal and prevent it from hearing their petitions for otherwise ordinarily the litigant would like that his case proceeds. In the circumstances it is difficult to say that the petitioners were actuated by considerations of public interest. Secondly, it is not in dispute that all the Members/Vice-Chairman were eligible for appointment, in that, they were fully qualified. Thirdly, it must be remembered tht the proposal for the appointment of Members had been initiated much before 15.4.1991 and had been cleared by the State functionaries long before that date and by the then Chief Justice of India before the decision was communicated by the Central Government to the States on 19.4.1991. It is legitimate to assume that the proposal must have been thoroughly scrutinised by the Chief Justice of India before he gave his approval to the same. Fourthly it is necessary to notice that R.P.Kapoor was on deputation to the Government of India since 1980 and he was repatriated to the State in 1990 and, therefore, in the absence of positive evidence of his interference it would not be correct to attribute motives to him for the State Government's decision to shift the seat of Vice-Chairman to Bhopal on 4.1.1989. Actually in 1989 he was stationed at Hyderabad. Similarly much has been read into the note, discuss, made on 6.3.1991. As explained by R.P.Kapoor in his submissions before this Court that he desired to discuss the

matter as he had some doubt in regared to the vacancy position which, as the subsequent note of the Secretary, GAD., would show, turned out to be correct. So also much ado has been made about the Law Secretary personally carrying the file to Patna where the Chief Justice of Madhya Pradesh was then camping. There was urgency for the clearance of the file because of the time-frame set by judicial orders. It is wrong to read in this visit any oblique motive. The Law Secretary in his capacity as a member of the Committee was deputed to go to Patna so that he may be able to apprise the Chief Justice of the proposal and explain any matter on which the latter would need clarification. It is wrong to infer that the Law Secretary felt obliged to R.P. Kapoor because the latter had not recommended the former's name but the recommendation had come from the then Chief Minister. Even if in normal course of business R.P.Kapoor had in fact recommended his name as a part of his duty, that should not make any difference. Besides, it is clear from the affidavit of the Ex-Law Secretary that he knew that his appointment was cleared by the Government of India long before he proceeded to Patna. There was, therefore, no question of his being under the influence of R.P.Kapoor so as to affect his independent judgment. It is indeed true that R.P. Kapoor in his capacity as Chief Secretary forwarded the file to the Chief Minister on 11.4.1991 proposing his name as Vice-Chairman which was returned by the Chief Minister to the Secretary, GAD, on 27.4.1991. Did forwarding of the file amount to 'active association' with the process of appointment? The fact that under the Rules of Business framed under Article 166 of the Constitution, it is not disputed that the normal channel of submission was through the Chief Secretary. Two options were, therefore, available to R.P.Kapoor; either he as a part of his duty forward the file or refuse to endorse the file. There is nothing else on record to show his active participation thereafter. So far as Secretary, GAD, is concerned, he marked the file to the Chief Secretary, as per the Rules of Business. There was nothing else he could have done. The Chief Secretary could have avoided to endorse the file but to do so also he would have been required to say so. He chose to quietly forward the file to the Chief Minister without his own comment. It seems to us that the High Court read too much in this action of the Chief Secretary in describing the ultimate appointment as fraudulent. After all when the name of a Chief Secretary about to retire is proposed for appointment, it is impossible to think that the Chief Secretary would not know about it, if the Chief Secretary pretends ignorance, no court will accept the same as correct. Therefore, even if the Chief Secretary had not endorsed the file, it would not have made any difference. It was ultimately for the Cheif Minister to take a decision which was to be approved by the Governor as well as the Chief Justice of India. There is no hint on record to infer that he had in any manner influenced the decision of these functionaries. Therefore, merely because he forwarded the file to the Chief Minister which he was required to do as per the extant Rules of Business that ought not to be construed as an act to influence the decision of the aforesaid functionaries. Even without signing the file in normal course of business, he could have done the 'goading and egging' while pretending total ignorance. We are, therefore, of the view that the High Court read too much in this act of the Chief Secretary R.P.Kapoor. This suspicion of the High Court unfortunately coloured its vision resulting in it viewing each and every action leading to his appointment with suspicion. These, in brief, are a few aspects of the case which we have highlighted to demonstrate how the High Court fell into an error and misdirected itself causing miscarriage of justice. We must undo this injustice by allowing this appeal and setting aside the impugned judgment and order of the High Court and giving appropriate directions as under.

The appellants should be allowed to resume their office. Hence we direct that the appellants, as far as possible, be allowed to resume their office unless any one or more of them has or have retired. In case any of them have since attained the age of retirement, the State will treat them as on duty upto the date of retirement and work out their retiral benefits accordingly. All the appellants shall be entitled to arrears of pay and allowances from the date of judgment of the High Court upto the date of resumption of duty or date of retirement. The appeals succeed accordingly and the original writ petition will stand dismissed.

We are satisfied beyond any manner of doubt that the petitions filed by the three police Inspectors were, to say the least, motivated with a view to deriving personal benefits and not in public interest. Their idea was to paralyse the working of the Tribunal and benefit from the delay at the cost of other litigants. Otherwise how were they concerned with the legality of their appointments? This, in our view, is a glaring case of abuse of the process of the Court in the name of public interest. Can such petitioners be allowed to get away unscathed? We think they must be saddled with exemplary costs. We, therefore, direct that each petitioner shall pay a sum of Rs.15,000/- by way of costs. The amount of cost may be recovered from the provident fund/gratuity or any other future monetary benefit including pension or in ordinary course by executing the order.