Andhra High Court
P.V.S.V. Prasada Rao And Ors. vs Andhra University, Rep. By Its ... on 16 December, 2005
Equivalent citations: 2006 (2) ALD 1, 2006 (1) ALT 785
Author: V Rao
Bench: J Chelameswar, G Raghuram, V Rao
ORDER J. Chelameswar and Goda Raghuram, JJ.

1. We have had the benefit of perusing the painstaking and meticulously crafted judgment of our learned brother Hon'ble Mr. Justice V.V.S. Rao. We agree with the OPERATIVE conclusion that the appointments of over 200 candidates (party respondents) ought not to be invalidated as these persons having been appointed as lecturers/Readers have continued as such for over a decade, have settled down, got married, begot children and are now of an age disabling them from securing alternative employment. Some of these persons had already resigned, some have retired, some have died and the dependents of those who have died are also being given pension. If at this stage their initial appointments are declared invalid the social costs in terms of human misery and individual privations would be incalculable. Besides, for the resultant vacancies the petitioners may either be not interested in applying at this distant point of time, may not be able to compete or may not derive an advantage in terms of career opportunities commensurate with the misery and hardship that would be caused by the invalidation of appointments already made. For the reasons recorded by our learned brother Justice Rao, we therefore concur with the conclusion that it is not a fit case for grant of relief to the petitioners.

2. On the above view of the matter it may not perhaps have been necessary to go into the other questions presented for adjudication in the writ petitions. Our learned brother Justice Rao has however dealt with and recorded conclusions on the several aspects urged for consideration and perhaps appropriately as the Supreme Court while remanding the matter by its order dated 26-9-2003 in Civil Appeal No. 106 of 2003, directed adjudication afresh. We are in complete agreement with the opinion of Hon'ble Mr. Justice Rao on his conclusions on the following issues:

(A) That the writ petitions are maintainable including the one filed in public interest;

(B) On the conclusions with regard to applicable criteria for determining the eligibility for consideration for appointment including the principles enunciated and the conclusions recorded as to the relevant date for reckoning qualifications to the post;

(C) The conclusion that it is impermissible for the University to make appointments in excess of the posts advertised for recruitment without establishing an exceptional circumstance or an emergent situation, justifying a departure from this normal principle.

(D) That there was manifest arbitrariness in the conduct of the respondent-University in identifying the posts in faculties/ departments for applying reservations; and (E) On the conclusion that the respondent-University is required to identify the posts to which reservation is to be applied and specify this aspect by the time the selection process is initiated, preferably in the advertisement calling for applications to the notified posts.

3. We however consider it appropriate to record acaveat on the issue whether clubbing of posts, unit or groupwise, is valid.

4. To identify the appropriate and binding ratio on this aspect the decisions of the Supreme Court and of this Court in: (i) University of Cochin v. Dr. N. Raman Nair and Ors. ; (ii) Dr. Suresh Chandra Verma and Ors., v. The Chancellor, Nagpur University and Ors. ; (iii) State of U.P. v. Dr. Dina Nath Shukla and Anr. ; (iv) Dr. N. Chandrayudu v. Sri Venkateswara University, Tirupati 1995 (1) An.W.R. 277 : 1995 (1) ALD 627; (v) The Scholars and Teachers Action Committee v. Andhra University [W.P. No. 2081/99, dt. 14-6-1993]; (vi) K. Satyanarayana v. University of Hyderabad; and (v) The Scholars and Teachers Action Committee v. Andhra University 1996 (2) An.W.R. 477 = 1996 (2) ALD 122 (D.B.) were cited.

5. We will briefly analyze the above judgments including the factual and statutory context in which the judgments were rendered.

6. The University of Cochin v. Dr. N. Raman Nair and Ors. (Raman Nair) is the judgment of a three member Bench (per M.H.Beg, J).

FACTS:

7. Dr. Raman Nair unsuccessfully applied for the post of a Reader in the Hindi Department of the Cochin University. After the coming into force of the Cochin University Act 30/71 (the Act) by a resolution of the Syndicate of the University dated 6-1 -1973, Dr. A. Ramchandra Dev was appointed as a Reader. Dr. Raman Nair challenged the Syndicate's resolution dated 6-1-1973, an earlier resolution dated 17-7-1972 and the appointment of Dr. Ramchandra Dev. By the resolution dated 7-7-1972 the Syndicate of the University had resolved that the rules mentioned Under Section 6(2) of the Act be implemented in the case of teaching staff as a class except that the post of Professor shall be filled up exclusively on merit. The reservation quota against this category of should additionally be provided in the category Readers, Lecturers, Teaching Assistants etc, taken collectively. Section 6(1) of the Act reiterates the constitutional prohibition set out in Articles 15(1) and 16(2), viz. Prohibiting discrimination against any person on the ground only of religion, race, caste, sex etc., in respect of any employment or office under the university. Section 6(2) ordains the university to mutatis mutandis observe the provisions of Clauses (a), (b) and (c) of Rule 14 and of Rules 15,16 and 17, of the Kerala State and Subordinate Service Rules (Kerala Rules), as amended from time to time. Rules 14 to 16 of the Kerala Rules provide for and set out the methodology for reservation of appointments. Sub-rule (c) of Rule 14 of these Rules sets out the order of rotation in a cycle of 20 vacancies, for accommodating reservations in appointments.

8. Dr. Raman Nair being the first in the order of merit in the selection for the post of Reader in the Department of Hindi of the University, contended, inter alia, that the post of Reader in H indi is a particular category (falling with the said expression in Rule 14 of the Kerala Rules) and he was exclusively entitled for appointment to the said post as in terms of Rule 14(c) the first post in a category is reserved for OC. He assailed the appointment of Dr. Ramachandra Dev on the ground thatthe university wrongly interpreted the rules and the principles of reservation, by its resolution

dated 17-7-1972. He contended that in as much as the said resolution applied the principles of reservation to all the teaching posts of the university collectively the selection procedure is invalid.

9. Integral to the challenge by Dr. Raman Nair, arose the questions whether (a) the university could treat all posts as belonging to one class for the application of reservation rule; (b) whether the university could exempt the post of Professor from application of the reservation rule; and (c) whether in arranging the existing vacancies for applying the scheme of rotation, the order of arisal of the vacancies in the several teaching posts is relevant or the date on which the vacancy is announced/advertised.

10. The High Court quashed both the resolutions of the Syndicate of the university dated 17-7-1972 and 6-1 -1973. The decision of the Supreme Court came to be rendered on an appeal by the university.

11. The Supreme Court held that as a necessary implication of Rule 14(c) of the Kerala Rules, the order of rotation should be applied in the order in which vacancies occur and not in the order in which the vacancies are announced/advertised as the decision to announce/advertise a vacancy is a fortuitous circumstance which might lead to arbitrary exercise of power and to uncertainty. This was the finding on the 3rd aspect (c).

12. On aspect (b), regarding exclusion of the post of Professor from application of the reservation rule, the Supreme Court held that the resolution of the Syndicate of the university dated 17-7-1972 was invalid as it was contrary to the legislative mandate of Section 6(2) r/w Rules 14 to 16 of the Kerala Rules.

13. On the first aspect/question (a) which alone is relevant forour purpose, the Supreme Court held that Section 6(2) of the Act lodges in the university a power to determine what should constitute a class or category of service under the university and no rigid formula to fit all circumstances can be laid down and the authority concerned must be left to define, subject to constitutional limitations, what should be a class or category. It further held:

13. The word 'service' does seem to us to denote, as the High Court held, various classes or categories of posts within it. It is obviously the widest class. A classification which puts the whole teaching staff in one class for purposes of applying the rule would seem unassailable. But, one which puts all classes and categories of service from the peons to Professors altogether may, by destroying the distinction between classes and categories of service seems to run counter to the words used in Section 6(2). As that question is not before us, we refrain from deciding it. This provision appears to us to be intended to ensure that, whatever may be the kind of post to be held by a person in a service "under the University", principles laid down in Rules 14, 15, 16 and 17 must apply in making appointments to it. We are not called upon to decide here what is meant by a service "under the University" as it is admitted by both sides that this description applies to the post of a Reader. Nor have we to determine here the reasonableness of a classification which may put the teaching and non-teaching staff in one class or category.

(emphasis ours)

14. Applying its analysis of the statutory provisions to the facts, the Supreme Court found the resolution of the university's syndicate dated 17-7-1972 invalid in so far as it directs exclusion of the post of Professor from operation of the reservation rule, also found the said resolution ambiguous and accordingly held the said resolution to be invalid as the vacancy in the post of Reader in the Department of Hindi was the first to occur. But in the context of the clubbing of the teaching posts with the exclusion of the post of Professor from the application of the reservation rules, as the factual matrix was not wholly clear, the Supreme Court left it to the university to make its own reasonable classification in accordance with the principles laid down in the judgment and to determine which of the two claimants were entitled to an earlier appointment as a Reader, Department of Hindi and directed the university Syndicate to pass a resolution afresh, for the purpose.

15. On the question whether all the posts in the university or at least all teaching posts of the university could be clubbed together for applying the rule of reservation, the Supreme Court is seen to have (as apparent from para-13) merely made observations. The Supreme Court declined to decide the question whether a classification which clubs all classes and categories of service would be valid as that question was not presented for adjudication, it however observed that a classification which puts the whole teaching staff in one class for the purpose of applying the rule, would seem unassailable. It further observed that a classification which clubs all classes and categories of service from Peons to Professors, seems to run counter; to the words used in Section 6(2) as that could destroy the distinction between classes and categories of service.

16. The Supreme Court, in our very respectful view, cannot be assumed to have enunciated a ratio in Raman Nair that treating of teaching staff as one class for applying the rule of reservation is permissible or does not run foul of the equality injunctions of Article 14 and 16 of the Constitution. This issue was neither presented nor adjudicated and in fact specifically left undecided as was the question as to the validity of Section 6(2).

17. At the end of para-14 of the above judgment it was clearly recorded by the Supreme Court that the validity of Section 6(2) was not questioned either in the High Court or before the Supreme Court. Therefore the observation, as to the seeming unassailability of a classification that clubs teaching staff, is only in the context of the phraseology of Section 6(2) and even that as an observation as the question was not presented for adjudication by the Supreme Court. In our considered view therefore the judgment in Raman Nair is not an authority for the principle that clubbing the several teaching posts in a university in various categories such as Readers, Professors and Lecturers and in the several departments and disciplines, is a valid classification under Articles 14 and 16 of the Constitution.

18. Dr. Suresh Chandra Verma and Ors. v. The Chancellor, Nagpur University and Ors. (2 supra) (Suresh Chandra Verma) is a decision (per P.B. Sawant, J.) of a two Judge Bench of the Apex Court:

FACTS:

19. The Nagpur University (the University) issued an employment notification in 1984 inviting applications for 77 posts including 13 posts of Professors; 29 of Readers; and 35 of Lecturers, in several subjects such as Economics, Politics, Sociology, Physics, Pharmacy and Geology. The notification mentioned the total number of reservations category-wise and not subject-wise. The reservations were indicated en bloc in the category of Professors, Readers and Lecturers combining all the subjects in each category. Different selection committees were constituted and they recommended 47 candidates for 53 posts. The Executive Council constituted a sub-committee to decide which post should be reserved for reserved castes. On the basis of the recommendations of the sub-committee and considering the back log of vacancies, the Executive Council kept apart 17 posts and made permanent appointments only in respect of 30 out of the 47 candidates. The University decided to fill up the 17 remaining posts which were kept apart for reserved candidates by temporary appointments. Representations were made to the Chancellor aggrieved both by the employment notification as well as the procedure followed. In February 1986 the Chancellor appointed a one man committee Under Section 76 of the Nagpur University Act, 1974 (the Act) to inquire into the complaints. The committee submitted its report which was accepted by the Chancellor. Meanwhile writ petitions were filed in the High Court challenging the employment notification on the ground that the obtaining the recommendations from the Board of University Teaching and Reservations (BUTR) before issuing the employment notification was invalid and contrary to the provisions of Section 32(2)(iii) of the Act. The High Court quashed the employment notification on the ground of violation of Section 32(2)(iii) and restrained the University from making any appointments without obtaining recommendations from the BUTR. Acting on the recommendations of the committee and the decision of the High Court, the Chancellor of the University directed the Vice Chancellor to terminate the services of all the appointees including the appellant before the Supreme Court. Consequently termination orders were issued in April 1987, mentioning 4 grounds including that the reservation policy adopted was contrary to Section 57 of the Act; the University failed to comply with the mandatory provisions of Section 32 of the Act in failing to consult the BUTR and that the employment notification was illegal. After issuing the orders of termination, the Vice Chancellor exercised his emergency powers Under Section 11 of the Act and appointed all the terminated employees to the same posts to which they were earlier appointed protecting their pay and allowances but terming the appointments as temporary.

20. In appeal, by special leave, the Supreme Court considered the questions -(1) whether the employment notification was illegal for not indicating reservations post-wise; and (2) whether the termination of services of the appellant was unsustainable even if the employment notification was invalid.

21. Dealing with the challenge to the validity of the employment notification, the Supreme Court held that the blanket reservations of posts in the categories of Professors, Readers and Lecturers combining all the several subjects in each category was invalid and an arbitrary procedure. The Supreme Court held that neither the University nor the candidates knew (at the time of selection) as to which of the subjects and to what extent the posts were reserved. This kept both the candidates belonging to the reserved categories and the others in the dark. The selection committees which were constituted to interview the candidates for several posts also did not know whether they were interviewing the candidates for reserved posts, for assessment of the merit of the candidates from

the reserved category. The Supreme Court declared thatthe method of giving weightage to all reserved candidates irrespective of whether they were being considered for a reserved post, was impermissible. Another infirmity of the notification was that it left to the Executive Council the discretion to classify the posts and different subjects between reserved and non-reserved posts after the list of selected candidates was received from the different selection committees. This method provided a scope to eliminate unwanted selected candidate at that stage; whether such malafide conduct was indeed employed is irrelevant. The opportunity offered by the methodology adopted for arbitrary conduct was sufficient to introduce and a fatal infirmity to the selection process, ruled the Supreme Court.

22. On behalf of the University the procedure adopted for the employment notification and selection process was sought to be supported as being in conformity with the provisions of Section 57(4)(a) of the Act. Section 57 requires the University to state in an advertisement the total number of posts and number of reserved posts.

23. Dealing with the above defence of the University, the Supreme Court held that the word "post" in the context has reference to the faculty, discipline or the subject for which the post is created. The court held that mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subject for which the posts are advertised. The employment notification cannot be vague. It has to indicate the specific post i.e., the subject in which the post is vacant and for which applications are invited from the candidates belonging to the reserved classes and non-indication of the posts subject-wise defeats the purpose for which applications are invited from the reserved category candidates and further negates the object of a reservation policy and thus runs counter to the provisions of Section 57(4)(d) which require the selection committee to interview and adjudge the merits of each candidate and recommend him/her for appointment to the general posts and the reserved posts, if any, advertised, held the Supreme Court.

24. An analysis of the decision in Suresh Chandra Verma (2 supra) compels the inference that category-wise reservation, en bloc in the categories of Professors, Readers or Lecturers without indicating the reserved and unreserved posts subject-wise in the above categories is invalid and impermissible as (a) it keeps the applicants in the dark as to whether all vacancies in particular disciplines are earmarked for considering reserved category candidate or are open for all and (b) it confers on a subsequent level of the employer, be it the Executive Council in the case of a University or otherwise, an arbitrary power and discretion to identify posts in subjects for reservation, a level of discretion which is open to abuse or at any rate provides an incentive to arbitrary exercise of power. This ratio is spelt out by the Supreme Court both on general principles as well as by reference to the provisions of the Act.

25. In the context of the case on hand however Suresh Chandra Verma is not an authority for the principle that the posts in each category of Professors, Readers or Lecturers in the several subjects notified for recruitment could not be clubbed for the purpose of applying reservations. What all is mandatory is that the employment notification should disclose and specify the application of reservations in the posts subject-wise so as to provide a transparent system and to enable a rational

choice exercise by persons who desire to apply for the costs.

26. In State of U.P. v. Dr. Dina Nath Shukla and Anr. (3 supra) (DN Shukla), the notification dated 30-1-1995 issued by the University of Allahabad inviting applications for the posts of Professors, Readers and Lecturers treating the University or the Colleges as a unit and applying the rule of reservation for SC, ST and OBCs to the posts, unit-wise was questioned. Initially a Division Bench of the Allahabad High Court quashed the notification. A Two Judge Bench of the Supreme Court considered the appeal by Special Leave filed by the State against the judgment of the High Court.

27. On behalf of the appellants it was contended that as there were only single posts of Professors, Readers and Lecturers in most of the subjects in the University/ College and if recruitment is made to each single post, the rule of reservation cannot be satisfactorily applied, the impugned clarification issued by the Government on 19-4-1995 to treat all the posts in the several subjects together came to be issued, whereunder the entire university/college should be taken as a unit for the purpose of recruitment and the posts should be classified as three separate categories. It was also contended that the clarification dated 19-4-1995 issued by the Government was consistent with the provisions of Section 2(c)(iv) r/w Section 3(5) of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (for short 'the Act'). Section 3 of the Act provided for reservation in favour of SC, St and OBCs in public service and posts at the stage of direct recruitment and provided for the percentage of vacancies to be reserved and prescribed the roster for working out the reservation.

28. The respondents contended that the University's advertisement was issued for subject-wise recruitment in the university and applying the rule of reservation, the subjects in which the posts would be reserved were specified. While so the Government instructions created ambiguity as to the identity of the posts which are reserved and those which are not.

29. The Supreme Court disposed of the appeal declaring that subject-wise recruitment should be adopted in each service or post in each cadre, in each faculty, discipline, specialty or super specialty, as such procedure would intimate the aspiring candidates as to which particular post in a particular discipline or faculty is reserved or otherwise. The apex court declared that if the total posts are advertised without subject-wise specification of reservation, it would be difficult for the candidates to know which posts are available for general and reserved candidates. Relying on its earlier decision in Union of India v. Madhav (Madhav), the Supreme Court held that if there is any single post of Professor, Reader or Lecturer in a faculty or specialty/super-specialty which cannot be reserved for reserved candidate, it should be clubbed, the roster applied and made available for reserved candidates in terms of Section 3(5) of the Act. Section 3(5) of the Act ordains that for applying reservations under Sub-section (1) of Section 3 a notified roster should be applied continuously till it is exhausted. The Supreme Court held that where there is only one post in a cadre or faculty whether in the category of Professor, Reader or Lecturer, to facilitate application of reservation of such single posts carrying same scale of pay, such single posts should be clubbed and the roster applied in terms of Section 3(5) of the Act. Where however there are more than one post available in the same faculty, in the cadre of Professor, Reader or Lecturer, the advertisement should be made subject-wise applying Section 3(1) and 5 of the Act and on selection the candidates appointed should

be fitted as per the roster mentioned by the university or the educational institution. For this conclusion (that failure to specify the subject and post to which reservation is applied, in the recruitment notification, is an invalid procedure), the Supreme Court relied on its earlier decision in Suresh Chandra Verma (2 supra).

30. In Dr. N. Chandrayudu v. Sri Venkateswara University, Tirupati (4 supra) (Chandrayudu) a Division Bench of this Court (per S. Parvatha Rao, J.) considered the validity of the recruitment notification of the University dated 17-12-1993 which failed to specify reservation subject-wise. According to the impugned notification of the University the various faculties in the University were divided into three groups - Arts, Science and Engineering and Technology. The Science group in turn comprised several faculties such as Botany, Chemistry, Geology, Home Science, Maths, Zoology and others. The notification did not disclose whether a particular post in a particular faculty is reserved or otherwise. The reservations were applied group-wise.

31. Responding to the challenge, it was submitted on behalf of the University that the grouping of the faculties is justified in view of the orders of the State Government in G.O.Ms.No. 995, Education dated 15-12-1982 and the consequent resolution of the Syndicate of the University adopting the Government Order by its resolution dated 23-2-1983. The University also contended that grouping is advantageous to reserved category candidates as if the posts in a particular department are specified as reserved and if there be no qualified persons among the reserved candidates, the exercise of reserving a particular post in a particular subject would be rendered futile. However, if reservation is shown group-wise qualified persons belonging to the reserved category wherever available in the particular group could be accommodated in any of the posts and in any subject within the group.

32. The Division Bench of this court relying upon the decision in Suresh Chandra Verma (2 supra) held that the principle that subject-wise and post-wise indication is mandated was a principle enunciated by the Supreme Court not exclusively on the provisions of the Nagpur University Act but independently for the reason that non-indication of reservation of posts subject-wise would lead to arbitrariness and invidious discrimination. The Division Bench of this Court also concluded that the judgments in The Scholars and Teachers Action Committee v. Andhra University (W.P. No. 2081/91, dt. 14-6-1993) and in K. Satyanarayana v. University of Hyderabad (by a learned single Judge) holding (a) that the Suresh Chandra Varma principle was enunciated in the context of the provisions of the Nagpur University Act and (b) that Suresh Chandra Verma (2 supra) was a decision of two learned Judges of the Supreme Court as against the judgment in Raman Nair (1 supra), which was by a three judges bench of the Supreme Court, were not correctly decided as the Suresh Chandra Verma principle was enunciated not merely on the basis of the provisions of the Nagpur University Act but also on the ground that the procedure adopted by the Nagpur University was inherently arbitrary and invidious. The Division Bench also held that the Raman Nair decision turned upon how and in what manner the prescribed reservation should be given effect to and how the rule of rotation should be applied, and further that the question raised in Suresh Chandra Verma (2 supra) was not before the Supreme Court and did not arise in Raman Nair (1 supra).

33. Consequent on its analysis the Division Bench in Chandrayudu allowed the writ petition and invalidated the recruitment notification for the notified posts of Lecturers and Readers, which followed the methodology of group-wise reservation.

34. Scholars and Teachers Action Committee v. Andhra University (5 supra) (STAC) (per C.V.N. Sastry, J), is a judgment of a Division Bench of this Court delivered on appeal against the judgment of the learned Single Judge. The Division Bench in STAC agreed that the contention of the appellants that the decision of the Supreme Court in Suresh Chandra Verma covered the field and consequently it was mandatory that the reserved posts subject-wise should be indicated in the recruitment notification itself and a recruitment notification made without specifying the posts and the subjects to which reservations is to be applied would be invalid. The Division Bench also concurred with the analysis, the principle enunciated and the conclusions of the Division Bench of Chandrayudu (4 supra). However, the Division Bench dismissed the appeal as on facts, it came to the conclusion that it was not a fit case for interference and invalidation of the selections already made.

35. It is thus apparent that Chandrayudu and STAC (4 and 5 supra) are the decisions of two Division Benchs of this Court taking the views and clearly enunciating the principle and ratio that the notification by a University inviting applications for filling up of posts in several categories, posts, faculties and disciplines, should clearly spelt out, identify and specify the particular posts in each category and subject to which reservations in favour of SCs, STS and OBCS is applied. Failure, to so specify the reserved category and subject, would invalidate the selection process.

36. We have already indicated while analyzing the decision of the Supreme Court in Raman Nair (1 supra) that the observations (in Para 13 of Raman Nair) "that a classification which puts the whole teaching staff in one class for the purpose of applying the rule would seem unassailable/', is an observation in the context of the phraseology of Section 6(2) of the Cochin University Act, 1971 and in the context of the factual situation where the validity of Section 6(2) of the said Act was questioned neither before the High Court nor the Supreme Court and the constitutional validity of clubbing of posts was not in issue. The other decisions which we have analyzed supra do not touch upon the issue as to the validity or otherwise of a procedure of clubbing of posts.

37. In our considered view, in the constitutional context the guarantee of equality before the law and equal opportunity under the laws, including in matters of public employment mandates that all persons qualified, in accordance with rationally prescribed standards of qualification, should have an equal opportunity to compete for public employment and to posts of their choice in public employment. This right should be balanced with the equally legitimate constitutionally permitted scheme of affirmative action and subject to the limitations of the extent to which reservations could be made, the limits having been reiterated in Indra Sawhney and Ors., v. Union of India and Ors. 1992 Supp. III SCC 217. Clubbing of posts or faculties, unit or category wise is but a procedural aspect. The procedure adopted by a public authority while structuring recruitment to public employment opportunities must conform to the constitutional goal of equal opportunity, mandated in Articles 15 and 16 of the Constitution of India. This requires a delicate balancing of the guaranteed constitutional right of equality with the equally value-pregnant constitutional principles

that permit affirmative action. There cannot be a universal constitutional principle that clubbing of posts is valid (or otherwise). The nature of the clubbing, the consequences of clubbing and whether as a result of clubbing equal opportunity is denied to qualified candidates to compete to posts of their choice (subject however to the need for affirmative action) must all be considered while determining whether clubbing of posts and faculties is constitutionally sound. Where the clubbing of posts or faculties for instance results in denial of equal opportunity to a qualified candidate to compete for a post of his choice or if posts in a particular discipline are year after year enveloped only for accommodating reserved categories or for open categories there would be denial of equal opportunity either for the open category candidates or reserved category candidates, as the case may be in such a situation the procedure of clubbing requires relevant scrutiny on constitutional standards.

38. On the above aspect we need say no more. The validity of the procedure of clubbing faculties or posts must be considered on a case to case basis applying the overarching constitutional principle that equality of opportunity is inalienable and it is not the clubbing or non-clubbing of posts or faculties that is transcendent.

V.V.S. Rao, J.

PROLOGUE:

1. The people of the country always look to the Courts for redressal of a grievance, which would afflict them in the complex legal field. Whether such issues are sensitive or insensitive, make sense or not and whether such issues leave impact on the present and dictate the future, the Courts can always look to the past to understand the present problems and renderdecisions to solve not only present situations but also those which might occur in future. Therefore, notwithstanding the fact that there are judicial decisions in the branch of law concerning us in this case we proceed on the premise that we have clean slate to scribe.

2. In the long history of the oldest university of Andhra Pradesh, namely, Andhra University, ('the University') a number of Lecturers, Readers and Professors are appointed to carry out the main objective of the University, namely, extension and transmission of knowledge in various fields. One such recruitment was made a little long ago pursuant to employment notification T.S.No. 1/92 dt. 17-10-1992. Appointments of Lecturers and Readers were made in various departments/faculties even while the legality of those appointments remained contentious issue in the highest Court of State of Andhra Pradesh and in the highest Court of the country. The grounds of challenge mainly centered round the core question as to how the university should implement the policy of reservation in favour of candidates belonging to scheduled castes, scheduled tribes and backward classes. The question was agitated earlier before this Court for almost two decades resulting in almost half a dozen reported/unreported decisions. But, still never ending battle among competing rights moves up and down in the hierarchy of constitutional courts. Now after almost fifteen years we are asked to invalidate the appointments made by the university and send back appointees to a position of 1992 AD status quo ante leaving them and their families in lurch. The case in a nutshell presents unique dilemma though as a constitutional court the question is neither shirked nor

avoided.

INTRODUCTION:

3. The lone petitioner in W.P.No. 8835 of 1994 filed writ Petition seeking a Writ of Mandamus declaring the selections made by the University to the post of Lecturers in Environmental Science as arbitrary and unconstitutional and for a consequential direction to the University to go through the process of selection all over again by constituting selection committee. Earlier petitions being W.P.No. 5672 of 1993, other candidates challenging appointments to the posts of Lecturers in other departments also filed W.P.No. 19278 of 1994 as well as W.P.Nos. 3338 and 3082 of 1994. These Writ Petitions were either not pressed or were dismissed as withdrawn. We will mention details a little later at appropriate place. While W.P.No. 8835 of 1994 was pending, the petitioner therein namely, P.V.S.V. Prasad Rao along with nineteen others filed W.P.No. 4885 of 1995. This Writ Petition is pro bono publice effort comprehensively challenging the action of the university. The petitioners in W.P.No. 4885 of 1995 prayed for a Writ to quash the appointments made by the university pursuant to advertisement No. T.S.1/1992, dt.17-10-1992 by declaring the appointments and whole process of selection as vitiated by illegalities, irregularities, and mala fide action of fourth respondent (Vice-Chancellor of the University). In this Writ Petition though initially Government of Andhra Pradesh, University, Board of Management of the University, and the Vice-Chancellor of the University in his personal capacity shown as parties, subsequently, by reason of orders passed by this Court in W.P.MP.No. 15265 of 1995 all selected candidates in various faculties/ departments were added as party respondent Nos. 5 to 208. Be it also noted that though the petitioners in W.P.No. 4885 of 1995 sought interim orders not to regularise or confirm the services of the candidates appointed pursuant to impugned notification, this Court declined to pass any order.

4. After the university as well as selectees who are added as respondents filed counter affidavit opposing the Writ Petitions, initially W.P.Nos. 5672 of 1993 was placed before Division Bench of this Court and the learned Judges of the Division Bench having not agreed with the view taken by another Division Bench in Dr. N. Chandrayudu v. Sri Venkateswara University referred the matter to Full Bench. Therefore, the Writ Petition along with W.P.No. 4885 of 1995 was placed before Full Bench. Writ Petition No. 4885 of 1995 was referred to Full Bench by learned Single Judge for being heard along with other two Writ Petitions. The Full Bench heard all the three matters together as the question involved is the same.

5. Whether the reservation be indicated post-wise or group-wise in the notification calling for applications for the posts? The Full Bench considered the question in the background of two executive orders issued by Government of Andhra Pradesh - first respondent herein; being G.O.Ms.No. 927 Education (C) Department, dt.20-11-1982 and G.O.Ms.No. 995 Education (C), Department dt. 16-12-1982 whereunder Government directed that the reservation in teaching posts should be made by grouping faculties in the Group-I consisting of Arts, Commerce and Social Sciences subjects, Group-ll consisting of Science subjects, and Group-Ill consisting of Engineering and Technology subjects. Having noticed that these two Government orders were not challenged in spite of observations made by the Division Bench in Dr. N. Chandrayudu v. Sri Venkateswara University 1995(1) An.W.R.277: 1995(1) ALD 627 by judgment dated 6-10-1999, the Full Bench held

that the writ petitions are barred on the principle of estoppel and that 'the University' has not violated any statutory provisions or Government Orders.

6. It is to be noticed that the question, which was considered by the Full Bench earlier, was considered by the Division Bench of this Court in Writ Petitions being W.P.No. 9175 of 1997 and batch in relation to Sri Krishnadevaraya University, Anantapur. By judgment dated 24-7-1998, this Court dismissed all the Writ Petitions upholding the action of Sri Krishnadevaraya University in applying communal roster prescribed by the relevant State Government rules. Be it also noted thatthe Division Bench also considered the question whether grouping of departments/subjects into Group-I (Arts) and Group-ll (Science) in the impugned notification and following alphabetical order within the group for the posts to implement reservation is void or unconstitutional. The Division Bench answered the question in favour of the University holding that such method does not render the selections unconstitutional. Be that as it is, aggrieved by the judgment of the Full Bench in W.P.Nos. 5672 and 17425 of 1993 and W.P.No. 4885 of 1995, dated 6-10-1999 and Division Bench judgment in W.P.No. 9175 of 1997 and batch, dated 24-7-1998, a number of Special Leave Petitions under Article 136 of the Constitution of India were moved. While granting leave, the Supreme Court by order dated 26-9-2003 in Civil Appeal No. 8106 of 2003 set aside the judgment of Full Bench as well as Division Bench and remanded the matters to the High Court observing thatthe matters may be adjudicated afresh after giving notice to the Advocate General for the State. The matters now have been set down before this Full Bench.

7. During the proceedings before this Bench all the Writ Petitions except W.P.Nos. 8835 of 1994 and 4885 of 1995 did not survive because the parties withdrew the Writ Petitions or they became infructuous. For the purpose of this judgment we treat W.P.No. 4885 of 1995 as comprehensive petition covering all points raised by the learned Counsel appearing for the parties.

THE CASE OF THE PETITIONERS:

8. All the petitioners claim to possess high academic post-graduate qualifications and teaching experience as research scholars/ research associates in various faculties in Arts, Science as well as Engineering subjects. In pursuance of the advertisement issued by the University on 17-10-1992 all of them applied for the posts to which they were qualified. The University conducted interviews spread over for a period of about one year. The third respondent, namely, Board of the Management of the University in its meeting held from 11th to 14th March, 1994 approved the appointments of 205 candidates and issued posting orders. The fourth respondent influenced members of the selection committee to act according to his tunes and got the members of the scholars and teachers action committee appointed as Lecturers/ Readers violating every rule.

9. After the appointments, the petitioners came to know about startling illegalities by respondents 1 and 3 at the behest of fourth respondent. They submitted a detailed representation to the Government as well as National Committee for SCs and STs. The Chairman of the Committee for Welfare of SCs, A.P. Legislative Assembly addressed a letter to the Minister for Higher Education, Government of Andhra Pradesh on 25-8-1994 bringing to his notice the injustice done to the SCs, STs while making appointments pursuant to the impugned advertisement. The National

Commission for SCs and STs called for report from second respondent on the points raised in its letter dated 8-7-1994. But, nothing happened and petitioners were made to run from pillar to post. On advice, they filed present Writ Petition questioning illegalities and irregularities committed by respondents 2 to 4 from the time of issue of notification till appointments were made.

10. In support of the prayer in the Writ petition in the affidavit accompanying Writ Petition the petitioners raised various contentions interspersed with rhetoric and hype. These contentions, in brief, which were again elaborated by the learned Counsel during oral submissions, are noticed in the following paragraphs.

11. By resorting to group-wise reservation the university is ruining the careers of several candidates, and redoing and undoing things to confer undue favour for the candidates of their choice. The candidates were totally in dark as to which post and which category is earmarked for reserved category and various sub-groups in Backward Classes were not informed as to which post is reserved for their sub-group. Until the completion of interview a candidate was not aware whether he was being considered for the post in open category or reserved category and he could only know at the time of appointment of the post. As held by the Supreme Court in 1990 reservations have to be made post-wise and non-indication of the post in such a manner defeats the purpose for which applications are invited from reserved category candidates and negates reservation, policy. The impugned notification is liable to be quashed and the appointments made pursuant thereto are liable to be set aside on this ground. The impugned notification pertains to backlog posts also, but no mention was made as to which of the vacancies are notified for the first time and which of the vacancies are backlog vacancies. Various vacancies were not properly notified and though various SC/ST candidates appeared for the selections respondents 2 to 4 did not fill up the vacancies on the ground that there are no qualified candidates to fill up the vacancies. As per orders of the Government in G.O.Ms.No. 234, dated 23-7-1991 the University has to fill up carry forward vacancies by taking up limited recruitment. But, instead of carrying forward the vacancies earmarked for SCs and STs, the University filled up the posts with candidates belonging to open category, which is illegal.

12. The impugned notification is bad as it also notified anticipated or consequential vacancies without specifying those vacancies though in some Department such consequential and anticipated vacancies did notarise. But, the fourth respondent appointed his favourite candidates to non-existence vacancies to a tune of 58 posts which are liable to be set aside. The action of the fourth respondent is mala fide and vitiates the selection process. Respondents 2 to 4 appointed ten persons as Readers and 31 persons as Lecturers in various faculties in the University without advertising the posts and the same is contrary to the dicta laid down by the Supreme Court in Hoshiar Singh v. State of Haryana . Among the candidates belonging to BCs candidates, candidates belonging to one sub-group were illegally appointed for the posts reserved for other sub-groups though candidates were available in particular sub-group. The respondents made several appointments ignoring communal roster and therefore the appointments were violative of Article 14 of the Constitution of India. The appointments made in some of the faculties are illegal and arbitrary as the university appointed unqualified candidates to the posts. Appointments made are illegal and vitiated because constitution of selection committee is not in accordance with Section 43(2) of the

A.P. Universities Act, 1991 ('Universities Act') for brevity) and that the Board of the Management is not duly constituted and that selections were entirely made on viva voce without awarding any marks for various aspects. By appointing candidates of open category to the posts earmarked for SCs/ STs the respondents have violated the mandatory constitutional provisions under Article 335 of the Constitution of India. The Members of the Board of Management abdicated their duties under the influence of fourth respondent and did not exercise their independent discretion while considering selections and therefore appointments are unsustainable.

13. The petitioner No. 14 in W.P.No. 4885 of 1995 is petitioner in W.P.No. 8835 of 1994. He is Post-Graduate in Marine-geology, obtained Ph.D., Degree and qualified in National Education Test (NET) conducted by University Grants Commission. He also claims to be an expert member in environmental impact assessment team constituted for study of Vamshadhara Project - II in Srikakulam District and claims to have nine years teaching experience as Lecturer in environmental science. Pursuant to impugned notification he applied for the post of Lecturer. His grievance is that though two posts of Lecturers were notified, three posts were filled up by appointing respondents 2 to 4 (in W.P.No. 8835 of 1994) though they did not possess requisite qualifications as per the notification dated 17-10-1992. Going by the pleadings in the other Writ Petition, it becomes clear that the challenge is mainly with regard to the appointments made in the Department of Environmental Science and on the two grounds noticed hereinabove.

THE CASE OF THE FIRST RESPONDENT:

14. When these matters were heard in 1999 by Full Bench of this Court, the Government did not choose to file a counter presumably for the reason that two Government Orders pursuant to which the University adopted rule of reservation were not challenged. After remand by the Supreme Court also, the Government did not evince much interest in the matter in spite of observations made by the Apex Court that whether or not the Government is a party to the proceedings, the Advocate General should appear on Court notice to explain the Government stand. We gave sufficient time and after much waiting only learned Government Pleader for Higher Education filed a counter on 2-12-2004 when this Court was about to commence hearing of the cases. In the context, we may passingly observe that it has been not so happy experience of this Court that in many public law cases filed under Article 226 of the Constitution of India the Government which defends its cases through scores of Government Pleaders, Special Government Pleaders, Assistant Government Pleaders, Standing Counsel do not evince interest to a desired level. More often than not, high percentage of cases are decided by this Court without there being counter/rejoinders by the Government which is invariably a party respondent in a Writ Petition. We may observe that Government Pleaders and Public Prosecutors who hold public/quasi public office need to be of high calibre of delivering services of high standard to the State and the judiciary. We are making these observations being well aware of the difficulties of the Lawyers who hold office of Government Pleaders in getting timely instructions. A solution for these problems is urgent need and we leave the matter there.

15. The counter affidavit filed by the Principal Secretary to Government of Andhra Pradesh in Higher Education Department sworn on 2-12-2004 (the Writ Petition was admitted on 15-3-1995)

reveals the ensuing position in the matter of reservation in the university appointments. The Government issued orders from time to time keeping in view the law laid down by the High Court and the Supreme Court. In order to safeguard the interest of the persons belonging to weaker sections and implement rule of reservation in the appointments to posts of University teachers, the matter was examined in the meeting of Vice-Chancellors held in Tirupati wherein it was resolved to restore roster system and carry forward rule for SCs/STs/ BCs upto Readers level subject maximum of 50% reservations and to fill up the posts with open competition if no reserved candidates are available continuously for a period of three years subject to condition that the number of posts so filled up by OC candidates have to be filled up by reserved candidates at later stage. The resolution of the Vice-Chancellors was considered by the Government, and issued orders in G.O.Ms. No. 927, dated 20-11-1982 directing all universities in the State to strictly apply rule of reservation by following roster system prescribed in Rule 22 of A.P. State and Subordinate Services Rules (hereinafter called, the General Rules). Subsequently, in response to queries raised by the university the Government issued clarifications with regard to carry forward rule and application of roster system in G.O.Ms.No. 995, dated 16-12-1982.

16. As per G.O.Ms.No. 927 teaching posts are divided into three groups. Subjects in Arts, Commerce, Business Management, Law, Social Sciences and Education including languages were included in Group-I. Group-ll consists of Science subjects and Group-Ill consists of Engineering and Technology subjects. Each group is to be single unit for applying roster system prescribed in Rule 22 of the General Rules and it is not mandatory to maintain rule of reservation separately for each subject and department. Such group-wise reservation does not lead to an undue favour for any candidate. All the universities followed group-wise reservation.

17. Following the judgment of the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University , the High Court in Dr. N. Chandrayudu v. Sri Venkateswara University (1 supra) ruled that post-wise reservation has to be followed though High Court did not strike down G.O.Ms.Nos. 927 and 995. After decision in Dr. N. Chandrayudu v. Sri Venkateswara University (1 supra), the Government appointed a Committee vide its orders in G.O.Ms.No. 181, dt.20-5-1995 with Commissioners of Education, Social Welfare, Collegiate Education and Director of Tribal Welfare. The Chairman of the A.P. State Council for Higher Education headed the committee. The committee submitted recommendations and after examining the issue, the Government issued G.O.Ms. No. 420, dated 18-11 -1995 inter alia directing the universities (i) to follow instructions in G.O.Ms.No. 995, dated 16-12-1982, but notify the vacancies department/subject-wise; (ii) to arrange departments/subjects within the group in alphabetical order for the purpose of applying roster points and (iii) to distribute vacancies including backlog vacancies based on the principle that un-represented and under-represented subjects/departments take precedence over the subjects/ departments having representations from SC/ST communities and when the Departments/subjects are equally unrepresented, the distribution of backlog vacancies shall be on the basis of alphabetical arrangement of such departments.

18. The principles adumbrated in G.O.Ms. No. 420, dated 18-11-1995 are in tune with the law laid down by the Supreme Court in University of Cochin v. Dr. N. Raman Nair 1975 (1) SLR 20 (SC). This Court in two decisions has also upheld the method adopted by the Universities. As per the

Government the reservation should be group-wise as contemplated in G.O.Ms. No. 995, dated 16-12-1982 and subject wise in the department as envisaged in G.O.Ms. No. 420, which is in consonance with decisions of the Supreme Court and High Court. All the posts in respect of reserved categories are to be notified even at the time of issuance of notification. If reservations are further divided subject-wise, it will cause great prejudice to the reserved classes themselves and in such an event in every department most of the vacancies will go to open competition category, and if a group is taken as unit for applying roster there will be large number of vacancies available and roster points can be fixed subject-wise. On the contrary, if subject-wise reservation is made, the advantage of reserved points would be lost as there are abundant vacancies to apply roster as per rule. The universities have followed rule of reservation in accordance with the guidelines issued in G.O. Ms. No. 420, and earlier two Government Orders directing to follow roster system group-wise and the same is valid, reasonable, rational and legal.

THE CASE OF THE UNIVERSITY:

19. The Registrar of the University filed a counter affidavit on behalf of respondent 2 and 3 opposing the writ petition. In brief, the contents of the counter may be noticed as follows. There is no registered association like Arundhati SC Welfare Association and SC/ST/BC-C Employees and Research Scholars Association in Andhra University. The petitioners 16 and 17 have nothing to do with the impugned notification and the writ petition filed as public interest litigation is not maintainable as PIL is unknown in service jurisprudence. Selection for appointment for the post of Lecturers, Readers and Professors in each department were held separately and therefore a single writ petition challenging selections and appointments for various posts is not maintainable. A candidate who applied for a particular post in a particular department is not entitled to challenge the selections and appointments for other posts in other departments. Earlier SC, ST, BC-C Employees and Research Scholars Welfare Association, Andhra University represented by its Secretary filed writ petition being W.P.No. 16678 of 1994 on 19-9-2004 challenging the impugned notification and the second petitioner filed writ petition being W.P.No. 8362 of 1994 on 21-4-1994 challenging the appointments made for the posts of lecturers in Physics department. Fourth petitioner filed Writ Petition No. 5474 of 1994 on 25-3-1994 challenging the appointment made for the posts of lecturers in Nuclear Physics department. Ninth petitioner filed Writ Petition No. 5844 of 1994 on 27-3-1994 challenging the appointment of readers in Geology department. Fourteenth petitioner filed Writ Petition No. 8835 of 1994 challenging the appointments made for the posts of lecturers in department of Environmental Sciences and nineteenth petitioner along with one K. Purushottam Paul filed Writ Petition No. 3123 of 1994 on 23-2-1994 challenging the selections made for the posts of lecturers in Philosophy department. They also filed Writ Petition No. 3776 of 1995 on 2-2-1995 challenging the appointment made to the posts of lecturers in Philosophy and Education departments and therefore the present writ petition is not maintainable.

20. The writ petition is liable to be dismissed on grounds of delay and laches. After the selections were made, the Board of Management by unanimous resolution dated 11-3-1994 approved the recommendations and accordingly the University made appointments. All the appointees joined in service. The petitioners who made applications pursuant to the impugned notification and having appeared before the selection committee are estopped from challenging the appointments made

pursuant to the impugned advertisement. There is no mandatory rule to maintain rule of reservation separately for each subject and department. As per the instructions of Government of Andhra Pradesh in Memo No. 995 dated 16-12-1982, reservation for the posts of lecturers and readers for SCs/STs/BCs were made group-wise and mentioned in the notification itself. As there was no statutory or executive instructions to earmark the posts in the advertisement itself the posts meant for reserved categories were not earmarked in each group as the roster points meant for SC, ST and BC categories can be filled up in one department or the other, subject to the availability of the suitable candidates. In case a particular post is earmarked for a particular reserved category and ultimately it is found that no suitable and eligible candidate is available, the students would be put to loss, as the posts cannot be filled up due to nonavailability of the candidate. This Court in W.P.Nos. 17522 of 1989 and 2081 of 1991 rejected the contention that the posts should be earmarked for reserved categories subject-wise in the advertisement itself. The impugned advertisement was issued as per the law laid down by High Court.

21. The teaching posts advertised in the impugned notification related to several departments. If suitable candidates are not available in the reserved classes, the corresponding roster points only can be carried forward but the posts cannot be kept vacant, in view of the academic necessity, which has to be given utmost importance. There can be backlog roster points but not backlog posts. In the impugned notification the existing vacancies were mentioned category-wise. While showing the split-up, the open and other categories, the backlog roster points were already included with the intention to fill up them. Therefore, the total number of advertised posts will not and cannot tally with total number of split-up roster points as detailed in the notification. While making appointments pursuant to the selections, the roster points relating to reserved classes were kept blank wherever there were no suitable candidates so that such roster points will be carried forward and will be shown as backlog roster points to be filled up subsequently. The allegation that the rule of reservation is given a go-by by the University is not correct. The allegation that respondents 2 and 4 resorted to illegal appointments to accommodate camp followers of fourth respondent is false. When suitable and qualified scheduled tribe candidates are not available for appointment, eight such candidates are appointed as research assistants allowing them sufficient time to get qualifications for the posts of lecturers. As per the provisions of Sections 5 and 49 of the Universities Act, it is competent for the Board of Management to create teaching posts and appoint teachers in the said posts for a period not exceeding one year. Therefore, the allegation that appointments were made in excess of the advertised posts is unsustainable.

22. Petitioner No. 5 is working as junior assistant (non-teaching) in the University, and he does not possess Ph.D., or M. Phil., qualification and he did not pass NET. He secured third class in post-graduation and possessed only diploma in Acting/Direction and therefore he cannot be appointed to any post. Petitioner No. 6 also does not possess Ph.D., or M. Phil., nor he passed NET. Petitioners 16 and 17 have not even applied pursuant to the impugned advertisement whereas petitioner No. 20 does not possess post-graduation and she misrepresented in her application that she obtained first class. Petitioner Nos. 1, 12 and 16 were already working as University teachers and even in the notifications pursuant to which they were appointed the posts reserved for SC/ST/BC were not specifically earmarked. Therefore, they cannot have any grievance. The interest of the candidates belonging to reserved classes are amply safeguarded and those candidates belonging to

SC/ST/BC who have come up in merit were considered in open category posts and the allegation that the University is ruining the career of several candidates and doing and undoing things to confer undue favour to the candidates of their choice is baseless.

23. On behalf of the University, other affidavits are also filed containing certain clarifications. However, it is not necessary to refer to these affidavits as respondents 2 and 3 adverted to the core controversy in their main counter referred to hereinabove. The fourth respondent, who was the Vice-Chancellor at relevant time and against whom mala fide action is attributed, also filed separate counter affidavit denying allegations. The fourth respondent while denying the allegation of mala fide action further stated that the Board of Management consisting of Government Officials resolved to accept decision of selection committees and he never put any pressure on any of the members.

THE CASE OF OTHER RESPONDENTS:

24. As noticed earlier when Writ Petition was filed, the petitioners did not add two hundred and odd appointees as parties to the Writ Petition. Subsequently, they filed an application to implead them. Accordingly, respondents 5 to 208 were added as respondents. Most of these contesting respondents were appointed as Lecturers and a few of them as Readers in various departments of the University and in various groups. Some of them also belong to SC/ST/ BC. Be that as it is, respondent Nos. 30, 57, 80, 145,149 and 153 filed separate counter affidavits projecting their case and opposing the Writ petitions. Respondent Nos. 8,23,25, 33, 37, 43, 90, 92, 93, 96, 97,102,104,107, 109, 117 and 206 filed common counter. Likewise, respondent Nos. 20, 24, 34, 41, 42, 45, 81, 85, 86, 94, 99, 100, 101, 103, 105, 106, 110, 111,116, 127 and 151 filed common counter affidavit. Respondent Nos. 10, 27, 36, 46, 82, 95, 112 and 115 also filed common affidavit. One B.N. Dhananjaya Rao filed affidavit on behalf of Respondent Nos. 5 to 7, 13,15 to 19, 22, 32, 40, 45, 49, 53, 77, 78, 80, 84, 88, 98, 118, 120 to 122, 124, 126, 128, 130 to 136,138 to 140,148,154,155,158 to 163, 167, 168, 170 to 175, 177, 180, 182, 183,185 to 201,204 to 207. A brief summary of averments therein is noticed in next paragraph.

25. Writ petitioners are not aggrieved persons and therefore they have no locus standilo maintain the Writ Petition. The Writ Petition is not bona fide and is filed with ulterior motive in gross abuse of process of the Court. The Writ Petition is filed relying on the dicta of the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) which interpreted the relevant legislative provisions. The petitioners do not belong to reserved categories to have any grievance. Even if subject-wise reservation was not shown in the impugned advertisement, the University considered the interests of the weaker sections and extended adequate representation. By the method adopted by the University maximum number of candidates belonging to weaker sections are benefited. The university followed instructions in G.O.Ms.No. 995, dt.16-12-1982 and impugned advertisement was issued in compliance with the instructions in the said Government Order and the decision of the apex Court. Petitioners 1 and 12 were appointed as Teachers pursuant to Notification No. T.S.2/88, and petitioner No. 16 was appointed pursuant to Notification No. T.S.1/87 and petitioner No. 9 was appointed as Teacher in 1985. Even in those notifications the reservation was not shown subject-wise. The petitioners therefore cannot turn around and challenge the method and manner of the selections, which were also followed when the petitioners were recruited in the past. The petitioners are therefore estopped from raising such a ground in challenge to the impugned

notification.

26. The committees consisting of experts of the respective fields selected all the contesting respondents. Therefore, the selection undertaken by the expert bodies cannot be interfered with. The respondents, who were appointed, joined service in March 1994. If the selection process is interfered at belated stage, it would cause substantial hardshipto the appointees. If this Court comes to a conclusion that there is any shortfall of the reservation quota, the University may be directed to make good instead of interfering with the appointments. The various grounds raised in the Writ Petition are untenable in law. The petitioners have filed elaborate rejoinder (reply affidavit) denying the various counter averments and repeating some of the contentions raised in the affidavit accompanying Writ Petition.

PETITIONERS' SUBMISSIONS

27. The learned Counsel for the petitioners in both the writ petitions, Sri N. Ram Mohan Rao, made submissions covering wide range of the field, though the seminal question requiring curial answers is seemingly simple. Before we formulate the said core question, we may notice those submissions. The impugned advertisement dated 17-10-1992 is bad in law as it is contrary to law laid down by the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra). The notification without indicating the post-wise reservation is contrary to the provisions of A.P. Universities Act, the University Code and Administrative Manual and therefore being arbitrary, violates Articles 14 and 16 of the Constitution of India. He also relied on the decisions of the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra), Dr. Raj Kumar v. Gulbarga University , State of U.P. v. Dina Nath Shukla , Dr. N. Chandrayudu v. Sri Venkateswara University (1 supra) and Scholars and Teachers Action Committee v. Andhra University 1996 (2) An.W.R. 477 : 1996 (2) ALD 1220, in support of the contention that the advertisement inviting applications for the posts must necessarily notify the reserved vacancies subject-wise.

28. Secondly, it is submitted that while including backlog vacancies in the recruitment notification, the University failed to satisfy the backlog vacancies category-wise, which is contrary to orders of the Government in G.O.Ms.No. 234 dated 27-3-1991 whereby and whereunder it was ordered that a special or limited recruitment should be undertaken for recruitment of SC/ST candidates. He would also submit that inclusion of anticipated/ consequential vacancies is vitiated by the principle of impropriety. According to the learned Counsel, if the posts for recruitment are not indicated as per the roster contained in Rule 22 of the General Rules, the same would amount to violation of the communal roster rendering all appointments illegal.

29. Thirdly, the learned Counsel submits that the impugned appointments are vitiated by illegalities and irregularities, in that many posts were not advertised and were filled up in excess of notified posts. These fell vacant subsequent to notification. It is also pointed out that the communal roster prescribed by Rule 22 of the General Rules was not strictly adhered to and appointments were made outside the roster. Nextly, it is urged that a number of candidates who did not possess the requisite qualification are appointed and the same is arbitrary.

30. Dealing with the objections raised by the respondents 2 and 3 on one hand and contesting respondents on the other hand, the learned Counsel would submit that the writ petition cannot be rejected on the ground of delay and laches when large scale illegalities crept in the recruitment process. Further, the learned Counsel would assert that all the petitioners have substantial interests in the cause and they have locus standi to question the same, even if this writ petition is treated as pro bono publico effort.

RESPONDENTS' SUBMISSIONS Advocate General for the State

31. The Supreme Court in its order dt.26-9-2003 in Civil Appeal No. 8106 of 2003 while setting aside the judgment of the Full Bench of this Court in W.P.No. 5672 and 17425 of 1993 and W.P.No. 4885 of 1995, as well as Division Bench judgment of this Court dt.24-7-1998 in W.P.No. 27509 of 1997 and other cases and while remanding the matter to this Court observed that notice to the learned Advocate General for the State may be issued for adjudicating the issues raised. Accordingly, when matters were listed before this Bench, notice was directed to learned Advocate General. He appeared on notice and submitted that if the principle of subject-wise reservation in university appointments is followed, it would be detrimental to the welfare of the persons belonging to the weaker sections. Therefore, he submits that the principles laid down by the Supreme Court in University of Cochin v. Dr. N. Raman Nair (4 supra) would ensure representation and representativeness for all the weaker sections. According to the learned Advocate General taking a group as unit of reservation for the purpose of Rule 22, the posts which would go to candidate belonging to SC/ST/ BC can be worked out subject-wise applying a reasonable method like, under-representation and un-representation. He would urge that the university has followed the same method in the impugned appointments.

32. Learned Advocate General also submits that the Government has issued guidelines in G.O.Ms.No. 420, dt.18-11 -1995 in obedience to the judgments of this Court dt.23-12-1994 in W.P.No. 13702 of 1994 and 10935 of 1994. In the said orders, the Government instructed the Universities to observe rule of reservation group-wise notifying vacancies subject-wise, to arrange departments/subjects within a group in alphabetical order for the purpose of roster points while filling up backlog vacancies on the principle of un-representation and under-representation. According to learned Advocate General, the method stipulated in G.O.Ms.No. 420 would ensure equitable distribution of various posts of Lecturers/ Readers in various departments among candidates belonging to SCs/STs/BCs.

Counsel for the University

33. Sri D.V. Sitarama Murthy, learned Counsel for the second respondent; Andhra University, and respondents 3 and 4 argued as follows, (i) The Writ Petition is filed by way of public interest litigation and as held by the Supreme Court such a petition is not maintainable in service jurisprudence. Reliance in placed on Ashok Kumar Pandey v. State of West Bengal . (ii) The Writ Petition suffers from delay and laches and is liable to be rejected as third party interests of a large number of highly qualified persons have been crystallised into right. If the appointments are interfered after about a decade and a half, the same would cause hardship to the appointees and

University administration would suffer. The explanation offered by the petitioners to get over delay and laches is unsustainable because all the petitioners applied for the posts, they were very well aware of the appointments made and indeed non-selectees including some of the petitioners filed earlier Writ Petitions which now stand dismissed or withdrawn. Reliance is placed on Madanlal v. State of Jammu and Kashmir , University of Cochin v. N.S. Kanjoonjamma and Union of India v. N. Chandrasekharan. 1998 SCC (L&S) 916 (iii) Petitioner No. 4 filed W.P.No. 5474 of 1004 and the same was dismissed by Full Bench of this Court on 9-2-2001 following the judgment of another Full Bench in W.P.No. 5672 of 1993 and batch, dt.6-10-1999. The said petitioner did not file any appeal against order in W.P.No. 5474 of 1994 and therefore issue raised is barred by principles of resjudicata. (iv) The proviso to Section 49 of the Universities Act empowers the Board of Management to fill up posts of teachers for a period not exceeding one year. Section 5 of the Act empowers the University to create teaching posts. In view of time gap between date of notification and actual recruitment, the University resorted to excess recruitment as it was necessitated to run smoothly the university academic activity. Such recruitment does not in any manner impinge upon fundamental rights of the petitioners. Reliance is placed on Gujarat State Deputy Executive Engineers' Association v. State of Gujarat 1994 (2) SLR 710, Prem Singh v. Haryana State Electricity Board, Surinder Singh v. State of Punjab, 1997 (5) SLR 269 Virender S. Hooda v. State of Haryana 1999 SCC (L&S) 824 and Suvidya Yadav v. State of Haryana. 2003 SCC (L&S) 252 (v) Having regard to the administrative convenience, University has discretion to relax last date criteria uniformly to all eligible candidates and the action of the university being bona fide is sustainable in law. As per the circular of the University Grants Commission all the candidates who submit Ph.D., thesis before 31-12-1993 are eligible for appointment as lecturers. Therefore, all the candidates belonging to reserved categories likely to submit Ph.D thesis by 31-12-1993 including petitioner No. 6 were selected and placed in the panel. The attention of the Court is invited to Bhupinder Pal Singh v. State of Punjab AIR 2000 SC 2011, (vi) The allegation that some of the respondents (selectees) do not possess requisite qualifications is without any substance. All the candidates selected are found to be qualified, eligible and suitable for the posts for which they were selected.

34. The contentions of the learned Counsel for the University on the main question may now be noticed. The groupwise reservation does not in any manner impinge Articles 14 and 16 of the Constitution of India. The Supreme Court in University of Cochin v. Dr. N. Raman Nair (4 supra) upheld groupwise reservation when the university treated all posts of Lecturers as belonging to one class and posts of Readers as another class for applying rule of reservation. The rule of reservation or method and manner of providing reservation cannot be of rigid universal application. When the university adopts rationale and unilateral method of classifying posts of Lecturers/Readers into groups as units of reservation, the same cannot be termed inequitable or arbitrary. The University has adopted the guidelines/ directions issued by first respondent in G.O.Ms.No. 927, dt.20-11 -1982 and G.O.Ms. No. 995, dt.16-12-1982 wherein it was directed that rule of reservation should be implemented by following Rule 22 of the General Rules by adopting prescribed 100 point roster. In the absence of any rule to mention reservation subject wise in each group, the dicta laid down by the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) has no application.

35. The reservation for SCs/STs/BCs provided by grouping arts, sciences and technology faculties separately does not in any manner amount to irrational classification nor it is arbitrary. If reservation is resorted subjectwise, candidates belonging to reserved categories may not even get right for being considered for posts though they can compete with OC candidates. When endeavour of the State is to provide reservation in all public posts, resorting to subjectwise reservation would work out to the detriment of reserved categories. Therefore, the University made appointments following roster points (groupwise), keeping in view the need of the University, overall interest of the reserved categories and specified requirements of particular departments or particular colleges. Following such a method, the University acted in a fair manner by scrupulously adhering to the principle of under-representation and un-representation while earmarking posts in each group for reserved classes.

Other counsel:

36. Sri E. Manohar, learned Senior counsel, appearing for large number of appointed candidates submits that writ petition which is in the nature of PIL is not maintainable, that the University followed an equitable principle while filling up reserved vacancies and such a method should receive the approval of the Court as held by the Supreme Court in University of Cochin v. Dr. N. Raman Nair(4 supra) and that Suresh Chandra Verma v. Chancellor, Nagpur University {3 supra) has no application to the appointments made by Andhra University, that the writ petition is liable to be dismissed for delay and laches and that the writ petitioners having participated in the selections are estopped from questioning the selections made in 1994. The learned Senior Counsel would point out that when appointments were made on 11-3-1994 pursuant to impugned notification dated 17-10-1992, W.P.No. 4885 of 1995 was filed by the petitioners on 15-3-1995 after lapse of three years during which period a large number of lecturers came to be appointed and they acquired a vested right to hold the posts. If the appointments are set at naught, the same would certainly cause prejudice and hardship to selected candidates.

37. Sri P. Krishna Reddy, learned Counsel for respondent No. 149, Sri G. Vidya Sagar, learned Counsel for respondent No. 153, Sri T.S. Harnath and Sri K. Sarva Bhouma Rao, appearing for some of the respondents in W.P.No. 4885 of 1995, Sri C.C.S. Sastry for respondent Nos. 2 and 3, Sri P.V. Sanjay Kumar for respondent No. 4 in W.P.No. 8835 of 1994 made submissions supplementing the submissions made by the learned Counsel for the University. In sum and substance, all these learned Counsel contend that recruitment as per the communal roster is required to be made at the time of appointment and not at the time of issuing recruitment notification and therefore the impugned notification is not invalid, that earlier this Court has upheld similar notifications and therefore the question cannot be permitted to be re-adjudicated, that recruitment made to anticipated vacancies does not in any manner impinge upon rights of the petitioners and that on principle of equity, the appointments of the respondents at this point of time cannot be invalidated. The counsel placed strong reliance on the decisions of the Supreme Court in H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka , C.M. Singh v. H.P. Krishi Vishva Vidyalaya, Roshni Devi v. State of Haryana and Rekha Chaturvedi v. University of Rajasthan 1993 Supp (3) SCC 168.

Reply arguments by the petitioners' counsel

38. In this reply arguments, Sri N. Ram Mohan Rao, submits that if large scale illegalities give rise to a constitutional question in relation to filling up of vacancies reserved for SCs/STs/BCs, the Court is entitled to examine the questions raised even if the case is filed invoking the PIL jurisdiction. He would place strong reliance on Dr. Meera Massey v. Dr. S.R. Mehrotra . Nextly, he would argue that though for the purpose of reckoning roster points for SCs/STs/BCs, the best method is grouping classes or categories of lecturers based on the faculty divisions, while filling up the roster points, at the threshold itself the University is bound to indicate reserved category to whom the post of a particular roster point is earmarked subjectwise. According to the learned Counsel, the same is not done and if the University fills up the roster points on any method perceived by it or a method stipulated by the Government, the same would amount to violation of principles of transparency and fairness. It would give uncontrolled power to the Vice-Chancellor who can earmark a particular roster point to a particular department as per his whims and fancies. This, according to the learned Counsel, would not only result in violation of reservation as per roster points but also results in excessive reservation to a particular category in a particular department.

QUESTIONS FRAMED AND POINTS FOR CONSIDERATION

39. During the course of the proceedings before this Court, learned Counsel for petitioners suggested that the following questions might arise for examination by us.

1. Whether the Principles of Reservation have to be applied in each Department, treating it as Unit or group wise?

2. Whether the Posts reserved for respective categories have to be notified right at the time of the selection process is initiated or not?

3. Whether the University is justified in appointing and filling in more number of vacancies than notified?

4. Whether the University is justified in filling up anticipated vacancies?

5. Whether the University is justified in considering the candidates who acquired the qualifications later than the last date for submission of applications?

6. Whether the University is justified in appointing candidates who do not possess the qualifications necessary for the posts?

7. Whether the University is justified in interfering with the merit ranking assigned by selection committee, without recording any reasons?

8. Whether the University is justified in selecting and appointing candidates to a different post, than the one for which they were subjected to selections?

9. Whether the University is justified in approving the selections, which lack objectivity?

40. As noticed in the pleadings as well as written submissions, the University as well as contesting respondents have raised other questions touching upon the maintainability of public interest litigation, the effect of delay and laches and the principles of equities that may govern the cases. On an overview of all these aspects, we are of considered opinion that the following points would arise for consideration.

I. Maintainability of public interest litigation.

II. Principles of reservation to be followed by the University.

III. Illegality or otherwise of appointments made by the University.

IV. Effect of delay and laches.

V. Effect of Estoppel and Waiver.

41. Other minor points urged before us, which are presented as different questions as noticed hereinabove, would also form part of the three broad points as above.

MAINTAINABILITY OF PUBLIC INTEREST LITIGATION

42. As noticed earlier, the writ petition is opposed by the University as well as contesting respondents on the ground that public interest litigation is not maintainable in service matters. According to the learned Counsel for the respondent University, the petitioners have no redressable grievance to invoke jurisdiction under Article 226 of the Constitution of India for enforcement of their rights. It is also pointed out that petitioners 1, 16 and 17 are non-applicants for the posts and that petitioners 2, 4, 5, 7,11,12,14,18 and 19 belong to OC category and therefore they cannot have any grievance with regard to method and manner of providing reservation in various departments/groups. It is further urged that the petitioners did not come up for selection and therefore they are estopped from questioning the recruitment. According to the learned Counsel for the University, the petitioners are espousing the cause of others and the same does not fall within parameters of PIL jurisdiction of this Court. Percontra, the learned Counsel for the petitioners argued that when there are gross illegalities in the recruitment process adopted by the University, a PIL writ petition would be maintainable. There is a large volume of case law in India finding place in law books during the last 25 years. The jurisdictional aspects of PIL or social action litigation came to be considered by the Supreme Court in Charles Sobraj v. Superintendent, Central jail, Tihar ; Hussainara Khatoon v. State of Bihar ; Fertilizer Corporation Kamagar Union v. Union of India AIR 1981 SC 344; S.P. Gupta v. Union of India ; Peoples Union for Democratic Rights v. Union of India ; Bandhu Mukti Morcha v. Union of India ; Forward Construction Company v. Prabhat Mandal ; Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi ; D.C. Wadhwa v. State of Bihar ; Sachidananda Pandey v. State of West Bengal ; Rural Litigation and Entitlement Kendra v. State of U.P. ; Rakesh Chandra v. State of Bihar ; Ramsharan v. Union of India ; Janatadal v. H.S. Chowdary ; A.P. Pollution Control Board v. Prof. M.V. Nayudu ; Malik Brothers v. Nardendra Dadchi and Vinoy Kumar v. State of U.P. .

43. A Full Bench of this Court, to which one of us (VVSR,J) was member, in Andhra Pradesh Scheduled Tribes Employees Association v. Aditya Pratap Bhanj Dev, after referring to the above decisions of the Supreme Court summarized the principles of PIL as under.

(i) The Court in exercise of powers under Article 32 and Article 226 as the case may be can entertain a petition moved by anybody interested (not a busy body) in the welfare of the people, who by the misfortune of their being in a disadvantaged position and in low visibility area of humanity are not able to knock at the doors of Courts. The Court in such a case, is constitutionally bound to protect the fundamental rights of the disadvantaged people and ordain the State to fulfil the constitutional promises.

(ii) The Common law rule of locus standi as applied under Anglo-Saxon jurisprudence shall be given a go by and the rule of locus standi'\s relaxed to enable the Court to go into the grievances complained of on behalf of those poor who are not able to approach the Courts to vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.

(iii) Where issues of grave public importance like constitutional duty and functions and the questions of enforcement of fundamental rights of large number of public are raised, the Court will treat even a letter or a telegram sent to it as PIL by relaxing procedural laws especially the law relating to pleadings.

(iv) When the Court is called upon to give effect to the Directive Principles and Fundamental Duties, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so, it is the matter for the policy making authorities. The least, the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded in decision-making.

(v) In defence to a petition under PIL, the State or the Government are prohibited from raising the untenable grounds as to the maintainability of the petition before the Court.

(vi) The procedural laws do apply to PIL cases. But where the matter is of great importance like environmental protection, the principles of res judicata do not apply. Notwithstanding this, in view of Section 11 Explanation VI of Civil Procedure Code, the earlier judgment in a similar proceeding operates as res judicata in subsequent public interest case. Whether or not res judicata applies depends upon the facts and circumstances of each case.

(vii) Whenever there are serious disputes between two maverick groups with regard to a public institution, public interest litigation case is not maintainable. Therefore, a dispute between two warring groups purely in the realm of private law cannot be agitated as a public interest case.

(viii) In an appropriate case, where the petitioner might have moved a Court in his private interest and for redressal of the personal grievance, the Court in furtherance of public interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case.

(ix) The Court entertaining public interest litigation cannot reject a petition on the ground of non-availability of sufficient material. In such an event the Court has power under Article 32 and Article 226 to appointment Commission, and/or a fact-finding body to assist the Court.

(x) When lamentable state of affairs in the administration of a public institution established by the State is brought to the notice of the Court it may appoint a special committee to manage the public institution.

44. This Court finds that in Guruvayur Devaswom Managing Committee v. C.K. Rajan the Supreme Court summarised principles of PIL, on similar lines.

45. The dominant object of PIL is to ensure observance of provisions of constitution or law so as to advance the cause of the community or disadvantage groups by permitting any person acting bona fide to knock at the doors of the Court. In Vinoy Kumar v. State of U.P. (39 supra), it was observed that, "in every case filed in public interest the Court can exercise writ jurisdiction at the instance of third party only when it is shown that legal wrong or legal injury or illegal burden is threatened and a determined class of persons by reasons of disability or social backwardness is unable to approach the Court for relief". Can this principle be extended to service jurisprudence as well? In Court's considered opinion, in an appropriate case, PIL jurisdiction can be used to check the arbitrary exercise of appointing power in the field of public employment, guaranteed by Constitution of India to all citizens. Any arbitrary discharge of public functions in relation to public employment would negate the fundamental rights guaranteed under Article 16 of the Constitution of India. When such complaint is made, may be by unconcerned persons, the Court cannot be bogged down by technical rules of locus standi.

46. In Dr. Meera Massey v. Dr. S.R. Mehrotra (22 supra), respondent who was Professor in Himachal Pradesh University filed the writ petition assailing the appointments of the lecturers on the ground that the same was contrary to ordinance of the University and resolution of the Executive Council. The High Court quashed the appointments. Before the Supreme Court, the selectees, whose appointments were quashed, contended that Dr. Malhotra, writ petitioner had no locus standi. Strong reliance was placed on Janatadal v. H.S.Chowdary (36 supra), Jasbhai Motibhai Desaiv. Roshan Kumar and Subhash Kumar v. State of Bihar . The Supreme Court rejected the contention, observing thus:

Having considered the submissions, we do not find any of the observations made hereinbefore as applicable in the present case. We find Dr. Mehrotra has filed the writ petition being concerned with the anomalies and illegalities in the procedure adopted by the University in making selection and regularizing the various posts in contradiction to the Acts, Statues and Ordinances. He was aware fully of all what was happening with full grip of all the materials. Facts reveal that he was genuinely concerned to rectify the wrongs without any personal animosity against anyone. His feelings were bona fide, being Professor of History in the same University. He had all the details, fully equipped with facts and the law pertaining to the University, it was not for any personal gain. It was neither politically motivated nor for publicity. The golden key for public interest litigation was delivered in the landmark decision of this Court in S.P. Gupta case (26 supra). This was devised for increasing

citizens' participation in the judicial process for making access to the judicial delivery system to such who could not otherwise reach Court for various reasons.

47. The learned Counsel for the University has placed reliance on a recent judgment of the Supreme Court in Ashok Kumar Pandey v. State of West Bengal (8 supra) in support of his plea to reject the PIL writ petition. It was a writ petition filed in public interest seeking a mandamus to convert death sentence imposed on one Dhanunjay Chatterjee to life imprisonment because the death sentence was not carried out for a long time. A two Judge Bench of the Supreme Court while dismissing the writ petition made the following observations.

Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

48. As can be seen from the above passage, a reference was made to Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra (44 supra), while observing that in service matters PIL should not be entertained. In Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra (44 supra), the Supreme Court considered, inter alia, the question whether an administrative Tribunal constituted under the Administrative Tribunals Act, 1985, can entertain public interest litigation? Answering the question in the negative, the Supreme Court observed that if public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would be defeated and therefore "Administration Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger." Therefore, this Court is unable to accept the submission of the learned Counsel for the University that the writ petition is liable to be rejected on the ground that public interest litigation does not lie in service matters.

49. There is yet another reason to reject the submission. From 1994 onwards, the question of validity of large number of appointments made pursuant to advertisement No. TS 1/1992 dt. 17-10-1992 has been pending before this Court and if writ petition is rejected only on the ground that PIL is not maintainable, the same would amount to shirking duty to judicially review the action of University authorities in the realm of public employment. Secondly, a Full Bench of this Court has already decided the matter and on appeal, the matter stands remitted back to this Court. This point

is therefore decided against the respondents.

APPLICABLE PRINCIPLES OF RESERVATION

50. The University as an institution, by and large, is a place for acquiring knowledge. The subjects it offers for study are multi-disciplinary. In a given case even if University is single subject University like engineering and technology university or agricultural university, multi-speciality courses are invariably offered. In discharge of its constitutional duty, the State offers special treatment to citizens in low visibility area; SCs/STs/BCs - in all branches of knowledge and in all specialities in one subject. This is a reality which cannot be ignored. A person who comes out of university with a Bachelor's Degree, Post-Graduate Degree or Ph.D., would certainly like to use his knowledge in a productive manner and while doing so, desires to make a decent living out of it. It is not only due to socio-economic compulsions, but for reasons of psychological satisfaction as well. A scholar would be frustrated if such scholarship in any branch of knowledge is not of any use by the community and society. If university as a policy offers special positions by providing reservation for eligible persons, how the reservations are to be structured and enforced?

51. In a university offering scores of courses if the reservation is provided only in a few teaching posts pertaining to one or two departments, the same would cause heartburn for those scholars who are qualified in other branches of knowledge. Therefore, a suitable method, which cannot be called irrational or arbitrary, has to be found. Various State Governments and universities, for the last two decades; have been grappling with this problem. Whether all the posts in university should be treated as a class/cadre for the purpose of reservation? Whether each department/faculty or a group of departments/ group of faculties should be treated as class/ cadre for the purpose of providing reservations? In either case, what is the stage at which appointing authority must decide modalities of reservations? Whether group-wise reservation or whether subject-wise reservation ensures equitable distribution of reserved university posts among all persons aspiring for those reserved posts? This is the core question for Court's consideration.

RELEVANT CASE LAW

52. The University was constituted by an Act of Legislature known as Andhra University Act, 1926. The said Act was repealed by A.P. Universities Act, 1991, which brought all the teaching and non-teaching Universities under one legislative umbrella. The Government of Andhra Pradesh unveiled its comprehensive policy of affirmative action by providing reservations in their orders in G.O.Ms. No. 1793, Education, BC (C) Department, dated 23-9-1970, following the report known as A.P. Backward Classes Commission or Anantharaman's Commission. This Government order as amended was subject matter of number of Court cases but it stood test of time and has become the singular peace (sic. piece) of non-statutory binding rules of reservation which was subsequently given statutory force by reason of Rules promulgated by the Governor under the proviso to Article 309 of Constitution of India. Be that as it is, the syndicate of the University (now called Board of Management) by resolution dated 26-2-1971 adopted G.O.Ms. No. 1793, providing reservations for candidates belonging to SCs/STs only in the category of lecturers. Subsequently as instructed by the State Government, University also provided reservations for candidates belonging to backward

classes in the category of lecturers by reason of resolution of syndicate in 1977. Then came the Government orders being G.O.Ms. No. 927, dated 20-11-1982 and G.O.Ms. No. 995 dated 16-12-1982, which comprehensively contain instructions for providing reservations in the categories of lecturers and Readers in accordance with the roster system prescribed in Rule 22 of General Rules. The University since then provided reservations by dividing various faculties into three groups and considering each group as class/category for implementing hundred point communal roster prescribed in Rule 22 of General Rules. This background would be necessary for appreciating various precedents brought to the notice of this Court. The details of these instruments are adverted to infra.

53. Various decisions dealing with the question can be discussed in two separate groups. One set of decisions has taken the view that groupwise reservation ensures equal and equitable treatment of the candidates belonging to reserved classes vis-a-vis the general/OC candidates as well as inter se among reserved candidates. In these decisions, the Court broadly took a view that the reservation posts have to be calculated treating the entire teaching faculty or a group of it as a class/category and then indicating the reserved posts subjectwise following a principle of equality. These are University of Cochin v. Dr. N. Raman Nair (4 supra), K. Satyanarayana v. University of Hyderabad 1993(1) SLR 244 (A.P.) and Scholars and Teachers Action Committee v. Andhra University (7 supra). In the following decisions, the Courts have taken the view that if the posts are not reserved subjectwise with specific pre-recruitment indication with reference to faculty, Discipline or speciality, it would result in unfair and arbitrary process and that such method would lack transparency: Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra), State of U.P. v. Dina Nath Shukla (6 supra) and Dr. N. Chandrayudu v. Sri Venkateswara University supra). We will discuss these authorities one after the other.

University of Cochin v. Dr. N. Raman Nair (4 supra)

54. Section 6 of Cochin University Act provides for implementation of principle of reservation in appointment of teaching staff by following a roster of twenty vacancies. In the roster, two posts were reserved for scheduled castes and scheduled tribes and eight for persons belonging to OBCs. There was another forty point roster for internal reservations of posts for candidates belonging to other backward class communities. In the impugned recruitment, the University appointed a scheduled caste candidate to the first vacancy of Reader in Hindi. Dr. Raman Nair approached the High Court contending that he being the highest ranking selectee, is alone entitled to get the posts as the first post is reserved for open competition. He contended that the principle of reservation is wrongly interpreted by the University. The High Court agreed with him on the premise that first vacancy of Reader has to be filled up on the basis of merit and open competition. The University opposed contending that if the totality of the posts and appointments were to be taken into consideration, the post would be reserved for scheduled caste candidate. Cochin University's contention did notfind favour with High Court. The Supreme Court granted special leave to appeal. The appeal of the University was, however, dismissed having regard to the fact that Dr. Raman Nair and the scheduled caste candidate, who is appointed, continued to hold posts of Readers in Hindi and having regard to the fact that University adopted a reasonable classification in treating the posts in different categories. The three-Judge Bench of the Supreme Court observed that in the absence of any

indication in the binding Rules or Statutes, it is open for the University to treat all the teaching posts as belonging to one class for application of the Rules and that if the method adopted by the University in classifying the posts into groups is reasonable, the same would pass the test of legality and constitutionality. It is apposite to notice following dicta.

It may, however, be necessary to determine the order of their appointments after the University has laid down its own method of reasonable classification either of the whole teaching staff of the University collectively or by putting various categories of the teaching staff into separate compartments for the application of the rules. We have held that the University has this power provided it is exercised on good and reasonable grounds. We have only indicated that, on such facts as have come to our notice, the particular vacancy for which both Dr. Raman Nair and Dr. Ramachandra Dev were competing seemed to us to be the first to arise for the purposes of applying Section 6(2) of the Act. As this matter was not fully investigated, and the power is vested in the University to make its own classification within the limits indicated by us, we think that it is desirable that the University should be left to make its own reasonable classification in accordance with the principles laid down above by us so as to determine which of the two Readers was entitled to be appointed earlier. In other words, the syndicate of the University will have to pass a fresh resolution which is in accordance with the law as explained by us and then to apply the rules in conformity with such a resolution in exercise of the powers possessed by the University.

(emphasis supplied) K. Satyanarayana v. University of Hyderabad (45 supra)

55. In this case the University of Hyderabad issued a notification on 21-12-1991 inviting applications for 12 posts of Professors, 28 posts of Readers and 18 posts of Lecturers. 15% of posts were reserved for SCs and 7 1/2 for ST candidates. The recruitment was inter alia challenged on the grounds that the non-implementation of policy of reservation for the categories of Readers and Professors is unconstitutional and that the posts of Lecturers in the Department in which such reservation is provided for is not indicated. The grievance of the petitioners therein was that due to such non-indication of reservation subjectwise/ department wise qualified candidates were disabled from knowing whether they should apply for the posts or not. The petitioner placed heavy reliance on Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra). The Writ Petition was opposed by the University contending that they followed instructions issued by University Grants Commission although no individual post was designated as reserved post. It was also the contention of the University that in the absence of any guidelines as to how the reserved posts are to be filled up in various departments, the university followed the principle of prescribed percentage in six faculties like Schools of Mathematics, School of Physics, School of Chemistry and School of Life Sciences, School of Humanities and School of Social Sciences taking each faculty as a unit.

56. A learned Single Judge of this Court who heard the matter noticed that the observations of the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) support the view that the posts reserved should be indicated subjectiwise and that mere mention of total number of reserved posts in the advertisement is not sufficient. The learned Single Judge also noticed the fact that Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) did not advert to University of Cochin, v. Dr. N. Raman Naircase (4 supra), which is a three-Judge Bench decision

and accordingly followed the ratio in University of Cochin, v. Dr. N. Raman Naircase (4 supra). This Court observed that if the reservation is affected with reference to roster specifying points reserved for SC and ST candidates there is lesser likelihood of injustice to such candidates and that effectuation of the policy of reservation would be guaranteed to all the qualified candidates in any disciplines. The following observations in paragraph 6 bring out the essential.

I find considerable force in the submission of the respondent-University that it is not necessary that specified posts in the subjects are notified as reserved. The chances are that candidates belonging to Scheduled Casts and Scheduled Tribes may not get their 'just desserts' by so doing, since there may not be any candidate qualified in that specified subject, whereas there may be required number of candidates who can be considered for appointment in other subjects/ departments which are not specifically reserved. The method adopted and which the Supreme Court approved in the University of Cochin, 1975 (1) SLR 20 (SC) was that the notification should indicate the percentage of reservations, and from among candidates who apply, the principle of reservation may be worked out on the basis of the roster prescribed by the statutory rules in favour of qualified candidates in the respective subject/department. Ordinarily, that should ensure better and greater justice to candidates belonging to Scheduled Castes and Scheduled Tribes rather than the subject-wise reservation specified in the notification.

(emphasis supplied) Scholars and Teachers Action Committee (STAC) v. Andhra University (7 supra)

57. In this case the Court considered the validity of selections for 167 posts of Professors, Readers, and Lecturers in different faculties of the University. The advertisement as well as selections made were challenged on the ground that the advertisement did not clearly indicate the number of posts or vacancies reserved for SCs/STs/BCs either subjectwise or groupwise, even though the rule of reservation is applicable for the posts of Lecturers and Readers. Reliance was placed on Suresh Chandra Verma. Chancellor, Nagpur University (3 supra). The learned single Judge who initially heard the matter, while dismissing writ petition came to the conclusion that the dicta in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) has no application as the same was rendered in relation to the provisions of Nagpur University Act, which provided for indicating the reserved vacancies postwise and that there was no such provision in the Andhra University Act. In the writ appeal, reliance was again placed on the Supreme Court judgment referred to hereinabove. The Division Bench accepted the submission while also placing reliance on another Division Bench judgment of this Court in Dr. N. Chandrayudu v. Sri Venkateswara University (1 supra), which held that employment notice issued without notifying the reservations postwise/subjectwise is bad. However, the Division Bench refused to grant any relief on the ground that the writ petitions were filed after the entire process of selection was completed without impleading the selectees. It becomes clearfrom this decision that what was in lis before this Court was whether the employment notice should specifically indicata. the reserved posts postwise. The Court proceeded that reservation of the posts taking the University teaching service as a class was valid. This would be clear on reading Dr. N. Chandrayudu v. Sri Venkateswara University (1 supra) and Scholars and Teachers Action Committee (STAC) v. Andhra University (7 supra) together.

Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra)

58. This is repeatedly cited by the learned Counsel for the petitioners to drive home the point that any recruitment based on an advertisement not showing the reservations postwise must be visited with invalidation. As we presently point out Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) is not an authority for the proposition that reservations should not be made groupwise or categorywise. It is an authority for the proposition that an employment notice ought to indicate reservations postwise, though the number of posts reserved for SCs/STs/BCs can be determined with reference to total number of posts for which recruitment is taken up whether taking the entire University service as one cadre or by grouping different posts into acadre for the purpose of providing reservation. If we notice the facts of the said case, this would become clear.

59. Nagpur University issued employment notice inviting applications for 13 posts of Professors, 29 posts of Readers and 35 posts of Lecturers in different subjects like economics, pharmacology, geology, physics, politics and sociology reserved for SCs/STs. If the total number of posts reserved in each category are considered, the same did not violate the principle of providing reservation for SCs/STs. However, the reserved posts were not indicated in the employment notice post-wise. Petitions were filed in High Court challenging the recruitment, inter alia, on the ground that non-indication of the subject-wise reservation in employment notice contravenes Section 77(C) of Nagpur University Act, 1974. The Supreme Court pointed out that such blanket declaration regarding reserved posts would result in situations where i) neither the University nor the candidates know at the time of employment notice as to for which of the subjects and in what number the posts are reserved; (ii) candidates belonging to reserved category in particular who wanted to apply for the reserved posts would not know for which of the posts they could apply; (iii) candidates would not know whether they could apply at all for the posts in subjects in which they were qualified; iv) large number of qualified candidates would be refrained from applying for the posts as against those who applied to take a chance; (v) selection committees which were constituted for interviewing the candidates for the respective posts did not also know whether they were interviewing the candidates for reserved posts or not and to assess merit of the candidates from the reserved category; and (vi) the method adopted to classify the posts after the list of selectees was prepared gave scope to eliminate unwanted selected candidates at that stage.

60. While pointing out, inter alia, the above abnormalities in the recruitment by giving a blanket declaration of reservations, the Supreme Court observed as under in para 7 of the Judgment (of AIR).

...When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subjectwise. The mere announcement of the number of reserved posts is no better than inviting application for posts without mentioning the subjects for which the posts are advertised. When, therefore, Section 57(4)(a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e., the subject in which the post is vacant and for which the applications are invited from the candidates belonging to the reserved classes. A non-indication of the post in this manner itself defeats the purpose for which the applications are

invited from the reserved category candidates and consequently negates the object of the reservation policy. That this is also the intention of the Legislature is made clear by Section 57(4)(d) which requires the selection committees to interview and adjudge the merits of each candidate and recommend him or her for appointment to "the general posts" and "the reserved posts", if any, advertised.

(emphasis supplied)

61. A reading of the above passage would show that what was laid down as mandatory requirement is indication of posts subjectwise and filling up required number of reserved posts postwise or subjectwise. The Supreme Court never prohibited the division of University teaching service into groups for the purpose of providing reservation. This would become clear by reference to the following passage (para 8).

It is common knowledge that the vacancies in posts in different subjects occur from time to time according to the exigencies of the circumstances and they arise unequally in different posts. There may not be vacancies in one or some posts whereas there may be a large number of vacancies in other posts. In such circumstances, it is not possible to comply with the minimum reservation percentage of 34 vis-a-vis each post. It is for this reason that the Resolution states that although minimum percentage of reserved posts may not be filled in one or some posts, it will be enough if in that year it is filled in taking into consideration the total number of appointments in all the posts. This, however, does not absolve the appointing authority from advertising in advance the vacancies in each post and the number of posts in such vacancies meant for the reserved category, and inviting applications from the candidates belonging to the reserved and unreserved categories with a clear statement in that behalf. In fact, the overall minimum percentage has to be kept in mind, as stated in the Resolution, at the time of issuing the employment notice or the advertisement as the case may be.

(emphasis supplied)

62. These observations would support the view that university can arrive at number of reserved posts by considering all vacant posts in university and then can advertise reservation indicating post/subject in which reserved post is available. No where Supreme Court found fault with the method of reckoning reserved posts.

State of U.P. v. Dr. Dina Nath Shukla (6 supra)

63. This is another relevant decision of the apex Court. Its factual matrix is that after coming into force of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994. University of Allahabad advertised posts of Professors, Readers and Lecturers duly reserving posts for SCs/STs/ BCs treating University or college as a unit for applying reservation. On a challenge, the Division Bench of Allahabad High Court invalidated the notification. Before the Supreme Court, the State sought to justify the advertisement contending that the entire University/college was treated as a unit for the purpose of recruitment reservation as

otherwise there would be total prohibition for application of rule of reservation because most of the subjects were single posts. The respondents, however, contended that in absence of indication of the post/subject which is reserved, it would not be possible for a candidate to know to which post he would be entitled to apply and seek recruitment in the reserved category. The Supreme Court explained the test to be applied while adjudging the constitutionality of rule of reservation as under:

...In adjudging the constitutionality of the scheme or the rule of reservation, what is required to be kept at the back of the mind is the equality and adequacy of representation as per the percentage prescribed by the rules/ administrative instructions. The enforcement of the Act hinges upon logistic interpretation and not on legalistic orientation; pragmatic and not pedantic approach so that all candidates get equality of opportunity to hold an office or post under the State. Care should also be taken to ensure that equal opportunity for selection and appointment is available to all candidates in all faculties; discipline, specialty and super-specialty and in each cadre/grade/service so that equality is spread out and no one category gains monopoly or is pushed into one category, grade or service.

(emphasis supplied)

64. After referring to Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra), the Supreme Court pointed out that "subjectwise recruitment" ensures adequacy of representation as mandated by the constitutional provisions. Para 13 of the reported judgment (of SCC) need to be excerpted.

Thus, it could be seen that if the subject-wise recruitment is adopted in each service or post in each cadre in each faculty, discipline, specialty or super-speciality, it would not only be clear to the candidates who seek recruitment but also there would not be an overlapping in application of the rule of reservation to the service or posts as specified and made applicable by Section 3 of the Act. On the other hand, if the total posts are advertised without subject-wise specifications, in every faculty, discipline, speciality or super-speciality, it would be difficult for the candidates to know as to which of the posts be available either to the general or reserved candidates or whether or not they fulfil or qualify the requirements so as to apply for a particular post and seek selection. As indicated earlier, if there is any single post of Professor, Reader or Lecturer in each faculty, discipline, speciality or super-speciality which cannot be reserved for reserved candidates, It should be clubbed, roster applied and be made available for the reserved candidates in terms of Section 3 (5) of the Act. Even if there exists any isolated post, rule of rotation by application of roster should be adopted for appointment. For achieving the said object, the Vice-Chancellor, who is the responsible authority under Section 4 to enforce the Act, would ensure that single posts in each category are clubbed since admittedly all the posts in each of the categories of Professors, Readers or Lecturers carry the same scale of pay. Therefore, their fusion is constitutional and permissible. The Vice-Chancellor should apply the rule of rotation and the roster as envisaged under Sub-section (5) of Section 3. The advertisements are required to be issued so that the reserved and the general candidates would apply for consideration of their claims for recruitment in accordance therewith. This interpretation would subserve and elongate constitutional objective and public policy of socio-economic justice serving adequacy of representation in a service or post, grade or cadre as

mandated and envisaged in Articles 335 and 16(4) read with Articles 14 and 16 (1), Preamble, Article 38 and Article 46 of the Constitution and all other cognate provisions.

(emphasis supplied) Dr. N. Chandrayudu v. Sri Venkateswara University (1 supra)

65. The recruitment notification issued by Sri Venkateswara University in December 1993 was impugned on the ground that by not specifying the reservations of various pots, the notification is rendered illegal, arbitrary and unconstitutional. Though initially the matter was listed before a learned Single Judge, the matter was directed to be heard by a Division Bench having regard to importance of the question involved. It was contended for the petitioner that groupwise method of reservation leads to large scale irregularities and abuse of power leading to failure in implementation of reservation policy, that the same would enable the university to accept applications of candidates belonging to all categories, including OC category and that there would not be any fair selection as the selection committee is not informed in advance as to which of the posts are reserved for SCs, STs and BCs. The University defended its action placing reliance on G.O.Ms. No. 995, dt. 16-12-1982. The University further justified the action contention that if the posts in a particular department are reserved and shown as such, in the event of qualified candidates not being available, the posts will have to be kept vacant and that if they are reserved groupwise, who ever eligible can be appointed as against reserved posts thereby ensuring proper implementation of reservation policy. The Division Bench proceeded on the premise that the question is no longer res Integra in view of Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) and did not agree with the view taken by learned Single Judge in K. Satyanarayana v. University of Hyderabad (45 supra) and Scholars and Teachers Action Committee v. Andhra University (7 supra). Applying ratio in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra), this Court observed:

We are afraid the learned Judge is not right in trying to distinguish Suresh Chandra Verma's case (1 supra) in the manner he did. As already pointed out by us, that decision did not turn on Section 57(4)(a) of the Nagpur University Act through that aspect also had to be considered by the Supreme Court in that case in view of the contentions advanced relying on that Section. We are also of the view that the decision of the Supreme Court in Suresh Chandra Verma's case (1 supra) would have been the same even if Dr. N. Raman Nair's case (9 supra) was cited because the question that was raised before the Supreme Court in N. Raman Nair's case (9 supra) was altogether different. That case turned on how and in what manner the prescribed reservation should be given effect to and how the rule of rotation was to be applied. The question raised in Suresh Chandra Verma's case (1 supra) was not before the Supreme Court and did not arise in Dr. N. Raman Nair's case (9 supra). The learned Judge might not have agreed with the view taken by the Supreme Court in Suresh Chandra Verma's case (1 supra) for the reasons given by him. But we cannot be persuaded by that.

66. On an analysis of cited precedents as above, the following broad principles would emerge:

(a) In the absence of any indication in the binding Rules or statutes, it is open to the University to treat all teaching posts as belonging to one class for application of Rule of Reservation.

(b) While evolving the method of grouping various faculties for the purpose of providing reservation, University must ensure that equal opportunity for selection and appointment is available to all candidates in all faculties, discipline and/or specialty in such a manner that no one category gains monopoly in getting reserved posts.

(c) If the method adopted by the University in classifying posts into a group/groups, or class/classes, is reasonable, the same does not suffer from the vice of illegality or unconstitutionality.

(d) While laying a method for providing Rule of Reservation, the University must ensure fairness and transparency in the recruitment process at the stage of issuing, notification-inviting applications, conducting selections and at the stage of recruitment.

(e) If there is any beiding statute or rule requiring the University to follow the method of roster, it should be strictly adhered to at the stage of recruitment notification as well as recruitment.

(f) If reservation is effected with reference to statutory roster, there is lesser likelihood of injustice because the aspiring candidates would know whether there is a post or posts in the department/faculty/group in which such candidate desires to compete for the post, and

(g) While giving the notification University should indicate to which of the posts and in which of the department/faculty reservation is provided. This has effect on the entire recruitment in the given recruitment year with reference to the roster.

67. Whether the method adopted by the University in reckoning the number of posts reserved for such classes is justified? In an attempt to deal with the case on hand, with regard to the principles laid down by the Courts as above, the first question would be justification for the action of the University in providing/reckoning reservation with reference to the groups. The University, following the instructions issued by the Government of Andhra Pradesh from time to time, has been maintaining the roster of vacancies. At the cost of repetition, it may be mentioned that, to commence with initially the University provided reservation only in the category of lecturers duly applying the policy of the Government adumbrated in G.O.Ms. No. 1793 dated 23-9-1970 by which the Government provided reservation accepting the report of a committee. However, the rule of 'carry forward' was not applied in deference to a State Government clarification as well as a communication of University Grants Commission dated 26-8-1975. As per the said communication, the number of posts to be filled up by reserved candidates were determined 'faculty wise'. At that juncture, the Vice-Chancellor's conference held at Tirupathi passed resolution on 9-4-1981 suggesting to apply the Rule of Reservation in teaching posts by grouping arts subjects, science subjects and engineering subjects as single units for applying the roster. Accordingly, the Government issued G.O.Ms. No. 927 dated 20-11-1982 to the effect that all Universities in the State have to provide Rule of Reservation for direct recruitment upto the level of Readers duly following roster system prescribed in Rule 22 of the A.P. State and Subordinate Services Rules in its application to SCs/STs and Backward Classes. It was also clarified that 'carry forward' rule should also be followed on the principles laid down by the Government. The syndicate of the University met

on 19-12-1982 and passed the following resolution.

Syndicate Resolution dated 19-12-1982

10. Considered the G.O.Ms. No. 927 Education (C) Department dated 20-11-1982 of Andhra Pradesh relating to rule of reservation in the matter of recruitment of teaching staff in the Universities issuing the following instructions to all the Universities in the State for strict compliance:-

(i) the rule of reservation for direct recruitment shall be applied and followed in respect of posts of Readers also in the Universities.

(ii) The roster system for appointment prescribed in Rule 22 of the Andhra Pradesh State and Subordinate Service Rules, in its application to Scheduled Castes, Scheduled Tribes and Backward Classes shall be maintained and followed for filling-up of vacancies by direct recruitment of the posts of Lecturers and Readers in the Universities; and

(iii) As far as carrying forward of vacancies is concerned, the principles adopted by the Government should be followed.

(S.II(1)/39490/82) RESOLVED that in view of the statement made by the Education Secretary that a further G.O. has been issued by the State Government clarifying the points raised in the letter dated 6-12-1982 of the University, consideration of the question be deferred pending receipt of the second G.O.

68. The Registrar of the University sought certain clarifications in the letter dated 6-12-1982/7-12-1982. After considering the same, the Government issued orders in G.O.Ms. No. 995 dated 16-12-1982. The said Government Order contains the points on which the University sought clarification and the clarifications given by the Government. It is therefore necessary to refer G.O.Ms. No. 995 dated 16-12-1982, verbatim:

In the G.O. 1st cited, orders were issued for implementation of the rule of reservation in the teaching posts upto Readers level in the Universities as per the instructions contained therein.

In respect of above orders, the Registrar, Andhra University in his letter 2nd read above has requested clarification on the following points:

(i) to specify the principle adopted by the Government in regard to carry forward of vacancies.

(ii) To clarify specifically, if the roster and carry forward is to be applied subject wise, that in relation to each department of study separately or in relation to all the concerned category of posts in all the departments put together. If the roster is to be maintained in relation to all vacant Lectureships in all the departments put together, and how it should be implemented, that is, how the earmarking of the posts, should be done to specific reservation groups may be indicated.

The principle of carry forward of vacancies in Government posts has been clearly indicated in Rule 22 of the Andhra Pradesh State and Subordinate Service Rules, the same procedure shall be adopted by the Universities, Constituent Colleges and Post-Graduate Centres also in regard to carry forward of vacancies.

Keeping in view the decision taken in the Vice-Chancellor's Conference held at Tirupati on 9-4-1981, Government direct that the reservation in teaching posts should be made by grouping the faculties as indicated below:-

GROUP-I : Arts, Commerce, Business Management, Law, Social Sciences and Education including all languages.

GROUP-II: Sciences GROUP-III : Engineering and Technology.

Each group should be treated as a single Unit and the roster system prescribed in Rule 22 of the General Rules shall be followed.

All appointments of Readers to be made with effect from 20-11-1982 shall be in accordance with the orders issued in G.O.Ms. No. 927 Edn., dt. 20-11-1982 and the carry forward rule shall be applicable for the vacancies that arise on and from 20-11-1982. Scheduled Castes/Scheduled Tribes/Backward Classes candidates selected and appointed on merit against Open Competition should not be counted against reserved quota.

69. After receiving the clarification vide G.O.Ms. No. 995 dated 16-12-1982, the syndicate of the University met on 22-1 -1993. The issue of providing reservation up to the level of Readers was reconsidered and the University syndicate on that day resolved to adopt the Rule of Reservation for SCs/STs and BCs in the matter of recruitment of teaching staff upto the cadre of Readers to be made in the University with effect from 20-11-1982. It was resolved that with effect from that date the 'carry forward' rule will also apply while making recruitment to the posts of lecturers and Readers.

70. A combined reading of the two Government Orders referred to hereinabove as well as the resolution dated 22-1-1983 passed by the University syndicate would show that the University adopted the policy of reservation for direct recruitment for the posts of lecturers and Readers and that reservation is to be in accordance with roster system prescribed in Rule 22 of the General Rules. Be it noted under the said rule, at the relevant time, the percentage of reservations was 14% for SCs, 4% for STs and 25% for BCs. By an order made in G.O.Ms. No. 117 dated 5-3-1983, the Government increased the reservation percentage for SCs/STs and BCs to 15% and 7.5% respectively in making appointments to the University to the teaching posts up to Readers as well as recruitment to non-teaching posts. The roster prescribed in Rule 22 of the General Rules also was revised and communicated to the University vide letter NO. 243/C-1/3-13/14-4-1985 of the Principal Secretary to Government in Education Department. The reservation percentage is provided in a cycle of 100 roster points to ensure equitable availability of reserved posts for those classes for whom the reservation is meant for. Here it may be noticed that the roster prescribed by Rule 22 of the General Rules as well as Rule 22 itself were amended from time to time. A reference, however, may not be

necessary to these amendments and it would suffice to notice that by G.O.Ms. No. 265 dated 24-10-1986, the Government of Andhra Pradesh having regard to increase in reservation percentage amended the roster duly substituting roster point numbers 11 and 36. This was further clarified by Memo No. 1.551/Ps/82-8-88, dated 31-10-1986. The impugned notification was issued on 17-10-1992. By that date, the roster which was amended by G.O.Ms. No. 265 dated 24-10-1986 read with Memo dated 31-10-1986 was in force.

71. It is seen that under the General Rules reservation is provided in appointments to a service, class or category of service. A class of service and category of service are also defined by the General Rules. The Government, however, following the recommendation of the Vice-Chancellor's Committee directed that reservation in teaching posts should be made by grouping the faculties; as can be seen, there is a discernible difference between Group I subjects on one side and Group II and III subjects on the other side. The study and prosecution of the courses in Group I is purely theory and does not involve any laboratory work or practical work. On the other hand in other branches included in Groups II and III require practical work in a laboratory. Even between Group II and Group III faculties, there is some difference in the matter of application of knowledge. Therefore, when the competent authority has chosen to provide reservation grouping the arts subjects as one class, sciences and engineering and technology subjects as different classes, the object sought to be achieved cannot be said to be irrational. If reservation is provided in direct recruitment by grouping faculties as above, does it violate any constitutional principle and the principle of equality? A policy of reservation which answers broad aspects of equality, without violating any law or statutory rules, must receive imprimatur of Court. If, however, the method of reservation violates roster of reservation, it would be voidable situation.

72. It is not in dispute that the executive may provide reservation as a policy of affirmative action by choosing its own method of doing so. Such method however must satisfy the test of minimum rationality; that is to say it must not be arbitrary and capricious. Any such policy must not be vague and must be transparent so that beneficiaries of such policy can avail the right to equality of opportunity guaranteed under Articles 14 and 16 of Part III of Indian Suprema Lex. The learned Counsel for the petitioners does not dispute the advantages of providing groupwise reservation. There would be lesser likelihood of injustice to those candidates who specialized in a particular faculty where there is less scope of creation of more number of posts. It would also ensure effectuation of reservation policy to all qualified candidates in any discipline. If subjectwise reservation is provided even at the stage of determining percentage, the same may be detrimental for: (i) there may be one post in the faculty, in which case, it would be constitutionally impermissible to provide reservation; (See Post Graduate Institute of Medical Education and Research v. Faculty Association) and (ii) there may not be any candidate qualified to compete for the reserved post in a faculty where reservation is provided.

73. There is also another imponderable, namely, for a long time the post may not fall vacant even if reservation is provided. In such an event, there may be criticism that the policy of reservation is not being implemented in a manner which benefits large number of aspiring reserved candidates. On the other hand, if reservation is reckoned/provided by grouping various faculties in a reasonable manner, the chances are that the SC and ST candidates who studied in all disciplines get a chance of

competing for the posts assuming that the University is offering a course in the similar discipline. In this regard, it has to be assumed that as at present the University is providing reservation in post-graduate courses in ail disciplines and therefore there would certainly be SC/ST/BC post-graduate candidates waiting for an opportunity to be appointed to a faculty post in the University.

74. As the various Government Orders starting from 1970 mandate University to provide reservations and those orders were adopted as regulations of the University with regard to reservations, it would be necessary to briefly notice the principles of reservation applied in public services in State of Andhra Pradesh. Be it noted that the Government Orders referred to hereinabove require University to apply rule of reservation in accordance with communal roster prescribed under Rule 22 of General Rules. Promulgated by the Governor vide G.O.Ms. No. 418, General Administration (Rules) Department dated 7-3-1962 .At the relevant time, the General Rules of 1962 were in force and therefore we have to make reference only to these Rules. The Rules of 1962 were superseded and new set of Rules were promulgated by the Governor under proviso to Article 309 of the Constitution of India vide Q.O.Ms. No. 436, General Administration (Services-D) Department, dated 15-10-1896 known as A.P, Stats and Subordinate Service Rules, 1996.

75. Unlike the new Rules, 1962, General Rules were in two parts. Part I contains the definitions and part II contains the Rules as such. 'Service' is defined by Rule 2(18) as 'a group of persons classified by the State Government as a State or Subordinate Service'. Rule 5 explains 'cadre' as 'a permanent cadre of each service, class, category and grade as determined by the State Government'. Rule 22 of the Rules deals with special reservation and lays down that all appointments to a service, class or category by recruitment, shall be made on the basis of principles of reservation contained in Rule 22. For the purpose of this case, Rule 22 (a), (b), (d), (e) and (f) are relevant. The same reads as under.

Rule 22. Special representation:- All appointments to a service, class or category-

(i) by direct recruitment, except where the Government by a general or special order made in this behalf exempt such service, class or category;

(ii) otherwise than by direct recruitment, where the special rules lay down that the principle of reservation of appointments shall apply to such service, class or category; shall be made on the following basis:

"(a) the unit of appointments for the purpose of this rule shall be one hundred of which fifteen shall be reserved for the Scheduled Castes six shall be reserved for the Scheduled Tribes twenty-five shall be reserved for the backward classes and the remaining fifty-four appointments shall be made on the basis of open competition:

Provisos 1, 2 and 3 omitted

(b) the claims of members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes, the physically handicapped persons or the ex-service men as the case may be, shall also be considered for the remaining appointments which shall be fined on the basis of open competition and where a candidate belonging to any of the categories is selected on the basis of open competition, the number of appointments reserved for that category shall in no way be affected during the period the reservation for the category is in force;

(c) omitted

(d) (i) if a qualified and suitable candidate belonging to any particular Group of the Backward Classes is not available for appointment in the turn allotted for them in the cycle, the turn shall accrue to the next group of the Backward Classes in the rotation and only if no suitable and qualified candidate is available in any of the four Groups, the turn shall be deemed to be allotted to the open competition;

(ii) omitted

(e) if in any recruitment qualified candidates belonging to the Scheduled Castes, or, as the case may be, the Scheduled Tribes are not available for appointment to any or all the vacancies reserved for the Scheduled Castes or, as the case may be, Scheduled Tribes, a limited recruitment confined to candidates belonging to the Scheduled Castes and/or as the case may be Scheduled Tribes, shall be made immediately after the general recruitment to select and appoint qualified candidates from among persons belonging to these communities to fill such reserved vacancies.

(f) (i) if in any recruitment year, qualified candidates belonging to Scheduled Castes, or as the case may be, the Scheduled Tribes not available for appointment to all or any of the vacancies reserved for the Scheduled Castes, or as the case may be, Scheduled Tribes, even after conducting a limited recruitment as specified in sub-rule (e), such vacancy or vacancies may be allotted to the open competition after obtaining the permission of the Government and may, thereafter, be filled by a candidate or candidates selected on the basis of open competition.

(ii) where any vacancies reserved for the Scheduled Castes, or, as the case may be, the Scheduled Tribes are so filled by candidates belonging to other communities an equal number of vacancies shall be reserved in the succeeding recruitment year for the Scheduled Castes, or as the case may be, Scheduled Tribes in addition to the vacancies that may be available for that recruitment year for the Scheduled Castes, or, as the case may be, the Scheduled Tribes; and if in the said succeeding recruitment year also qualified candidates belonging to the Scheduled Castes, or as the case may be, the Scheduled Tribes are not available for appointment to all or any of the additional vacancies, which are so reserved in that succeeding recruitment year, an equal number of vacancies shall again be reserved in the next succeeding recruitment year for the Scheduled Castes, or, as the case may be, the Scheduled Tribes, in addition to the number of vacancies that may be available for the next succeeding recruitment year for the Scheduled Castes, or, as the case may be, the Scheduled Tribes:

Provisos 1 and 2 omitted

(g) & (h) omitted.

76. The effect of Rule 22 of the General Rules while making recruitments pursuant to impugned notification can be better appreciated by briefly summarizing the purport of the Rule 22 of General Rules. Be it noted that hitherto the General Rules and the reservation provided thereunder was made applicable only in Government service, though public sector undertakings owned by the State Government by reason of executive flat adopted the rules of reservation. However, in 1997, the State Legislature enacted A.P. Regulation of Reservation for Appointments to Public Services Act, 1997 applying the rule of reservation to all quasi-Governmental organizations.

77. As mentioned above, cadre of each service, class, category and grade shall have to be determined by the State Government. University is autonomous entity governed by a statute. By reason of the provisions contained therein, the University syndicate by resolutions dated 19-12-1982 and 22-1-1983 had resolved to apply the Government Orders in G.O.Ms. Nos. 927 and 995 dated 20-11-1982 and 16-12-1982 respectively regarding rule of reservation for SCs/STs/BCs in the matter of recruitment of teaching staff in the University. Thus, whatever categorization or classification of University service made by the Government of Andhra Pradesh was adopted by the University. By reason of this, University teaching service has been determined to be in three categories, namely, Arts category (Group I), Science category (Group II) and Engineering category (Group III). In so grouping as noticed earlier, there is rationality in differentiating various categories and classifying them for the purpose of achieving the object, namely, providing proper distribution of reserved post from among three categories of service, namely, Arts category, Science category and Engineering category. Applying the test laid down in State of U.P. v. Dina Nath Shkla (6 supra), this Court holds that the method adopted by University for determining percentage of reservation groupwise does not as such violate any constitutional provision or statutory rule.

78. Under Rule 22 of the General Rules, the principle of reservation shall apply to all direct recruitments and whenever it is provided in promotions as well. Such reservation shall be with reference to a service, class of service or category of service. The entire service can be split into classes or categories for the purpose of treating such service/class/category as a unit of appointment. The unit of appointment in a service/class/category for the purpose of Rule 22 of the General Rules shall be one-hundred posts. Out of those, 15 per cent, 6 per cent and 25 per cent shall be reserved for SCs, STs and BCs respectively. Again, even while providing reservation to SCs/STs/BCs, the competent authority has to provide intra reservation to persons belonging to "differently abled" (physically handicapped), women, sports persons etc. When the State after some exercise comes forward with a roster of 100 points (it can be of less number also) and provides specific roster points for candidates belonging to open competition, SCs/STs/BCs, such roster posts shall have to be strictly adhered so as to answer Article 16 (1) and 16(4) of the Constitution of India.

79. In R.K. Sabharwal v. State of Punjab , it was held that:

When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserved categories and the candidates belonging to the general category

are not entitled to be considered for the reserved posts. On the other hand the reserved category candidates can compete for the non-reservation posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens, which in the opinion of the State, is not adequate, represented in the services under the State.... When the State Government after doing the necessary exercise makes the reservation and provides to the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward classes have already appointed/promoted against general seats.... The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Government to review the question of issuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the backward classes are operative, the same have to be followed.

80. Therefore, every recruiting authority has to strictly adhere to the rule of reservation as provided in Rule 22 of the General Rules. Under Rule 22 (d) of the General Rules, if a candidate belonging to a particular group of backward classes is not available, the posts can be filled up by candidate belonging to next group of backward classes in the rotation. Even after such exercise, if a suitable candidate is not available in any of the four backward class groups, the vacancy shall be allotted to open competition. Insofar as the roster points reserved for SCs and STs are concerned, if the candidates are notavailable for appointment in any recruitment, the authority is required to make a limited recruitment immediately after general recruitment to select and appoint qualified candidates belonging to SCs/STs. Even after such limited recruitment, qualified and suitable SC/ST candidates are not available, such vacancies may be allotted to open competition after obtaining permission of the Government. If it is done, that is to say, if the vacancies are allotted to open competition, equal number of vacancies reserved for SCs/ STs shall be reserved in succeeding recruitment year for SCs/STs as the case may be, which shall be in addition to the vacancies that may be available for them in the succeeding recruitment year. This position is made clear by Rule 22 (e) and (f) of the General Rules, which also provide the method to be adopted in the event of candidates belonging to SC/ST are not available in three succeeding recruitment years. The Rule 22 (g)(ii) of the General Rules also provides that where there is one single and solitary post borne on the class, category or grade of the service, the rule of special representation shall not apply for appointment to such post. What exactly has been done by the University in recruitment year 1992, pursuant to impugned notification?

81. In paragraph 14 of the counter affidavit filed on behalf of respondents 2 and 3 In 1997, the following is revealed.

...As perthe instruction of Government of Andhra Pradesh, the University is reserving lecturer posts and Reader posts for the SCs/STs/BCs on group-wise basis i.e., Group-I Arts; Group-ll Sciences; Group-Ill Engineering. This group-wise reservation is mentioned in the notification itself. The teaching posts in the University require high academic qualifications as prescribed by the University

Grants Commission. For certain posts, the University Grants Commission has been prescribing additional specializations also. The University has to follow the same, while so, the experience of the University administration is that for certain posts, there were no applicants from among BC, SC and ST classes. Even if there are applicants from the said classes, the selection committee was not recommending the names on the ground that they are not suitable. There was no statutory or executive provision to earmark the posts in the advertisement itself. If the posts are not earmarked, the roster points meant for SC, BC and ST classes can be filled up in one department or other, subject to the availability of the suitable candidates. It is needless to state that candidates are not available from the earmarked class, it may result in academic loss to the students.

82. In paragraph 21, the University in its counter states:

The teaching posts advertised under TS No. 1/92 dated 17-10-1992 relate to several departments. If suitable candidates are not available in the reserved classes, the corresponding roster points only can be carried forward but the posts cannot be kept vacant, in view of the academic necessity which has to be given utmost importance. Hence, there can be backlog roster points but not backlog posts. Petitioners do not appear to be aware of the difference between backlog roster points and backlog posts. In the notification, the then existing vacancies were mentioned category-wise. While showing the split up, the open and other categories, the backlog roster points were also included with an intention to fill them up under this notification. Hence, the total number of advertised posts will not and cannot tally with the total number of split up roster points as detailed in the notification. When appointments were made in pursuance of the said notification, the roster points relating to reserved classes were kept blank wherever there were not suitable candidates, so that the said roster points (kept as blank) will be carried forward and will be shown as backlog roster points to be filled up subsequently.

83. The University identified vacant posts in three groups and issued advertisement making a blanket reservation treating each group as a unit of appointment for the purpose of hundred point roster. The posts in each group were not specifically indicated which were reserved for SCs/STs and BCs. It is also doubtful whether selection committee was aware as to which of the candidates appearing before them are competing for the reserved posts. It must be remembered that even a candidate belonging to SC/ST/BC can be appointed against a roster point meant for open competition if he comes up in the merit in which event the roster point earmarked for open competition, for which SC/ST/BC candidate is selected cannot be reckoned as a reserved vacancy. However, it is the submission of the; learned Counsel for the University that in view of the absence of the rule or regulation or Government Orders, there is no necessity to point out the reserved vacancies postwise. According to him, though all the posts were not earmarked subjectwise reservation, selection committees empanelled candidates on the basis of merit in open category, SC/ST and BC candidates separately, and thereafter fitment against a roster point was made keeping in view the need of the University, overall interest of the reserved candidates and open category candidates, specific requirement of departments with due regard to relevant factors like relative merit of the candidates, under representation of reserved category in a particular department and the accumulated backlog vacancies in department or group.

84. This method adopted by the University is certainly goes against the principles laic-down in University of Cochin v. Dr. N. Raman Nair (4 supra) as well as Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra). This method would certainly result in anomalies or incongruities pointed out by the Supreme Court in Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra). Neither the candidates nor the selection committees were aware of the reservations with reference to the particular subject in each group. This would certainly gives a larger scope for a Vice-Chancellor who has a pivotal role at every stage of selections to manipulate the vacancy position at the time of appointments. For instance, depending on the whims and fancies, the Vice-Chancellor may order a particular SC vacancy to be filled up in a particular department though in comparison with other departments, the backlog of SC vacancies in another department may be more or the need may be more felt. This method would certainly deprive a qualified candidate of appointment in that subject from which the reserved vacancy was shifted to other department by the authorities. The procedure adopted by the University in not determining the subjectwise reservation posts at pre-notification stage and not advertising the posts subjectwise would certainly negates equal opportunity to all the aspiring candidates. The procedure certainly lacks transparency and whenever there is lack of transparency in discharge of public functions, the exercise by public authorities would be arbitrary and capricious. What do we mean by transparency in public administration or constitutional governance?

TRANSPARENCY IN PUBLIC ADMINISTRATION

85. Doctrine of rule of law in legal and political philosophy means many things for many people. The universal theme, however, is that the constitutional governance by rule of law is preferable to the constitutional governance by a few persons. Democracy presupposes peoples' rule by law or rule of law through people. The broad principle of rule of law contemplates that (i) all laws should be prospective, open and clear, (ii) that laws should be stable, (iii) that making of particular laws should be guided by stable and general rules, (iv) that the principles of natural justice must be observed, and that there should be a system of implementation of laws guaranteeing the independence of judiciary duly conferring on it the power to review public law functions. Another important principle of rule of law is that the rulers must make known the rules to the ruled. All persons must know what are the laws, rules and regulations by which they will be governed. This is more important in a democratic polity where an independent judiciary, lords over the exercise of legislative, judicial and administrative actions of organs of the State by reason of doctrine of judicial review. Transparency in public administration and constitutional governance is therefore a part of rule of law and indeed it is inseparable adjutant of rule of law. This Court may make reference to Merkur Island Shipping Corporation v. Laughton (1983) 2 AC 570 (CA) and the decision of the Supreme Court in Balco Employees' Union (Regd.) v. Union of India .

86. In Merkur Island Shipping Corporation v. Laughton (1983) 2 AC 570 (CA), Lord Donaldson MR. observed as under:

At the beginning of this judgment I said that whilst I had reached the conclusion that the law was tolerably clear, the same could not be said of the way in which it was expressed. The efficacy and maintenance of the rule of law, which is the foundation of any parliamentary democracy, has at least

two pre-requisites. First, people must understand that it is in their interests, as well as in that of the community as a whole, that they should live their lives in accordance with the rules and all the rules. Second, they must know what those rules are. Both are equally important and it is the second aspect of the rule of law which has caused me concern in the present case, the ITF having disavowed any intention to break the law.

(emphasis supplied)

87. In BALCO Employees' Union (Regd.) v. Union of India (5 supra), the decision of the Government of India to disinvest in M/s. Bharat Aluminium Company Limited and the decision of the core group to disinvest Government shareholding in favour of M/s. Sterlite Industries for Rs. 551.5 crores was impeached by BALCO Employees Union under Article 32 of the Constitution of India. It was, inter alia, contended that the decision making process lacked transparency and arbitrary. While explaining concept of transparency in public administration, the Supreme Court repelled the contention and observed as under.

It was contended by the learned Advocate General that the whole process lacked transparency. We are not able to appreciate this contention. The disinvestment of BALCO commenced with the recommendation by the Disinvestment Committee in its second report suggesting that the Government may disinvest BALCO. It is by global advertisement that the Global Advisor and the strategic partner were chosen. At every stage, the matter was looked into by the IMG and ultimately by the Cabinet Committee on Disinvestment. The system which was evolved was completely transparent. It was made known. Transparency does not mean the conducting of the government business while sitting on the crossroads in public. Transparency would require that the manner in which decision is taken is made known. Persons who are to decide are not arbitrarily selected or appointed. Here we have the selection of the Clobal Advisor and the strategic partner through the process of issuance of global advertisement. It is the Global Advisor who selected the valuer who was already on the list of valuers maintained by the Government. Whatever material was received was examined by high power Committee known as the IMG and the ultimate decision was taken by the Cabinet Committee on Disinvestment.

(emphasis supplied)

88. As can be seen from the above passage, public authorities as decision makers cannot act arbitrarily in the matter of selections and appointments and the manner in which decision is taken must be made known to all people, who depend on the decision of authority. In view of the global advertisement, appointment of global advisor and the whole exercise completed by the global advisor before the matter was recommended to core committee and then cabinet, the Supreme Court came to the conclusion that the process of disinvestment in BALCO was transparent. Two things would emerge from the two precedents cited hereinabove on the question of transparency. The decision maker must ensure that the manner in which a decision would be made, that is to say, the rules and regulations, the precedents if any, and the law that is to be applied, are known to those people who will be benefitted or adversely suffer by the decision. Secondly, making known all concerned with the method and manner well in advance would ensure transparency because

persons would know "where they would stand" while they are competing for the goods or services offered by the State.

89. Applying the principle as above and also the principles laid down by the Supreme Court in University of Cochin v. Dr. N. Raman Nair (4 supra), Suresh Chandra Verma v. Chancellor, Nagpur University (3 supra) and State of U.P. v. Dina Nath Shukla (6 supra), and also the decisions of this Court in Scholars and Teachers Action Committee v. Andhra University (7 supra) and Dr. N. Chandrayudu v. Sri Venkateswara University supra), this Court is compelled to hold that the non-indication and non-mentioning of the reserved posts for SCs/STs/BCs, department/faculty subjectwise in each group would certainly violates the principles of equality and the principle of equal opportunity to the citizens. We also are compelled to hold that the determination of percentage of reservations by dividing University service into groups would not in any manner work out to the disadvantage of the reserved class and indeed it is to their benefit. The University service is only one service and there is no separate service for lecturers/Readers departmentwise. When Rule 22 of the General Rules is applied by the University, taking each group i.e., arts, science, engineering, as a unit of appointment for the purpose of applying roster, the same does not in any manner violate the principle of equality or the statutory rules. Whenever a group is considered as a unit of reservation and roster points are earmarked by arranging in alphabetical order that would certainly mitigate against arbitrariness. However, such exercise should be undertaken at the pre-notification stage so that all those involved in the decision making like members of the selection committee, members of Board of Management would be aware when they discharge their functions of filling up the posts. This would also ensure that all those persons who are qualified would know as to whether they could apply for the posts or not in case they are competing for reserved posts. This would ensure transparency and fairness in the selection procedures. If the exercise of filling up the roster points in each group after the selections are over is followed, the same would certainly results in arbitrariness in filling up roster points.

90. It is true that, as contended by the learned Counsel for the University, when recruitment is to be made in a situation where the service consists of wide variety of sub-categories and there are candidates belonging to SCs/STs/BCs aspiring for posts in such sub-category, there would be necessarily limited number of roster points in every recruitment and the University has to evolve some method where all the candidates qualified in all sub-categories are given an opportunity to compete for the posts. To ensure this, there should be first indication of the posts and while indicating the posts at the stage of notification, one method which might ensure proper exercise would be to arrange the subjects/faculties/departments in each group alphabetically and fix roster points depending on number of posts in the recruitment. In this manner not only the roster with reference to group can be worked out with least arbitrariness but there will be more transparency and fairness. Indeed the learned Advocate General has brought to the notice of this Court the orders of the Government issued in G.O.Ms. No. 420 dated 18-11-1995 which was issued accepting the recommendations of the committee constituted by the Government pursuant to the judgment of this Court in Dr. N. Chandrayudu v. Sri Venkateswara University (1 supra). In the said Government Order, the Government accepted recommendations of the committee and issued the following instructions.

(i) Orders issued in G.O.Ms. No. 995, Education, dt.16-12-1982 regarding the observance of rule of reservation group-wise shall be continued. But the vacancies shall be notified Department/Subject-wise as ordered by the Hon'ble High Court.

(ii) The Department/subject within a group shall be arranged in alphabetical order for the purpose of roster points.

(iii) In filling up the backlog vacancies the distribution of these vacancies shall be done based on the principle that the un-represented and under-represented subjects/departments take precedence over the subjects/ departments having representation from SC/ST communities. However, in some of the Universities, there has been no recruitment in certain departments/subjects since 1982. Therefore, the question of treating them as totally un-represented for the purpose of distributing the backlog vacancies does not arise.

Among equally un-represented departments/subjects, the distribution of back-log vacancies shall be on the basis of alphabetical arrangement of departments/subjects;

(iv) for filling of the future vacancies, or the other back-log vacancies, the procedure shown at (i) and (ii) shall only be adopted;

(v) The following departments/subjects have been identified as unique departments/subjects:

1. Arabic, 2. Islamic, 3. Persian and 4. Urdu.

These departments/subjects in view of uniqueness may be deleted from the roster points. Recruitment to these departments/subjects may be known open to all qualified candidates.

91. The Government in the above Government Order i.e.,G.O.Ms.No. 420 dated 18-11 -1995 also ordered that the arrangement of alphabetical order in each group shall be approved by the Board of Management along with draft notification and that the vacancy shall be notified departmentwise/subjectwise. This Court is aware that the Government instructions came to be issued later and they may not have application to the recruitment of 1992. Insofar as the recruitment impugned in this writ petitions, the University did not even advertise the posts which were earmarked for reserved candidates.

92. The applications were invited by providing blanket reservation. Admittedly after the selections are over, the University resorted to the exercise of fixing roster points by adopting their own method taking into consideration the factors like un-representation, under-representation, unavailability of candidates and inter se merit. This method may serve the purpose of the University to comfortably complete the recruitment process but the same would not ensure equal opportunity in matters of public employment. Convenience and comfort of public authority is not always constitutional compliance with rule of equality.

93. To what extent injustice is done by reason of the arbitrary method adopted by the University? University did not place much material before this Court to justify that the principle adopted by following factors of un-representation, under-representation etc., has not resulted in any arbitrariness. The petitioners have placed before us (and this is not disputed) the select list of Readers and Lecturers groupwise as per the roster. Being aware that this Court is not appellate Court, passingly and illustratively the arbitrariness may be demonstrated with reference to these lists.

94. The following table would show the recruitment of Readers in Group I (Arts, Commerce and Law) taking the first ten points for which recruitment was made.

TABLE-I

Roster point	Name of the candidate	Status as respondent	Category under which the appointment is made	Department
57-OC	Dr. B. Meena Rao	5th respondent	OC	Politics &Public Administration
58-ST	Not filled up			
59-OC	Dr. B.S.R. Anjaneyulu	6th respondent	OC	Politics & Public Administration
60-BC B	Dr. G. Satyanarayana	142nd respondent	BC-B	Commerce
61-OC	Dr. T. Christanandam	16th respondent	OC	Philosophy
62-ST			ST	
63-OC	Dr. S.D.A. Joga Rao	17th respondent	OC	Philosophy
64-BC D	Dr. P. Vara Lakshmi	25th respondent	BC-D	English
65-OC	Dr. C. Sasikala	30th respondent	OC	Library & Information Science
66-SC	Dr. B. Premananda Rao		SC	Politics & Public Administration
67 to 94	Omitted			

TABLE-II

95. The following table would show the recruitment of Lecturers in Group I (Arts, Commer

Roster point	Name of the candidate	Status as respondent	Category under which the appointment is made	Department

100-OC	Dr. K.R. Rajani	13th respondent	OC	Philosophy
1-OC	Dr. S.C. Suguna Kumari	14th respondent	OC	Philosophy
2-SC	Dr. K. Sudarsana Raju	19th respondent	SC	Telugu
3-OC	Dr. B.V.S. Bhanusree	15th respondent	OC	Philosophy
4-BC A	Sri N. David Livinstone	32nd respondent	BC-A	Library Science
5-OC	Dr. E. Viswanadha Reddy	18th respondent	OC	Telugu
6-OC	Dr. G. Valasayya	28th respondent	OC	Library Science
7-SC	Dr. D. Pedaraju	21st respondent	SC	English
8-ST	Mr. P. Ramamanohara Rao	9th respondent	ST	Politics & Public Administration
9-OC	Dr. L. Manjula Davidson	20th respondent	OC	English
10 to 53	Omitted			

96. The recruitment for the posts of Readers (Table-I) commenced from roster point 57 in a roster of 100 points presumably for the reason that earlier recruitment in Group I stopped at roster point 56. In the above method, the roster point and the category to which roster point is allotted are non-variable factors whereas the department to which such roster point was earmarked to be filled up either by OC/SC/ST/BC candidate is a variable factor which would necessarily depend on some method. In the illustration in table I as above assuming that roster point 57 is earmarked to English department instead of Politics and Public Administration, the entire recruitment will change and some of the candidates belonging to reserved classes would have certainly got the opportunity for being appointed. If only it was advertised by the University that in group I for the post of Readers, the recruitment would commence at roster point 57 and that the roster points 58, 60, 62, 64 and 66 which are reserved for ST/BC/ST/BC/SC in that order for reserved classes, and that these were earmarked for departments for which recruitment is now made the things would have been different ensuring more fairness. As the department to which roster points are allotted was decided at the last stage of recruitment many candidates have lost the opportunity to seek public employment. There may be cases where there would be only one opportunity in the life of a qualified candidate in a particular subject.

97. Similar is the case of recruitment in Group for the posts of lecturers. As pertable II the recruitment commenced at roster point 100 and again roster was started afresh from point No. 1 onwards. Roster point 100 was allotted to Philosophy department. Why this was done? There is no rationale explanation for this. In the process, the roster point 100 and roster points 1 and 3 (in the fresh roster) came to be earmarked to OC category and allotted to Philosophy department. This would certainly does not satisfy the principle of un-representation and under-representation. There may be many instances in the recruitment like this but this Court must refrain from going into these aspects. It must, however, be observed that there is arbitrariness and caprice in the whole exercise of determining and earmarking the departments for reserved categories at post selection stage. The public authority must ensure fairness in all its actions. If the overall percentage of reserved candidates satisfies the number of posts reserved, that itself would not satisfy the principles of fairness though it may be relevant for the purpose of considering relief in these matters. Even while applying the roster as per Rule 22 of General Rules, there should be proper distribution of reserved

posts to all categories in equitable manner. After perusing the recruitment charts as per roster this Court is convinced that the University failed to indicate the departments/subjects/faculties at the stage of notification though it was aware where there is a need to fill up the reserved posts. Therefore, this Court feels compelled to hold against the University on this point.

98. Before considering other two minor points, the discussion thus far on this point may be summarised. In any recruitment where the entire service is divided into groups/ categories and where there are sub-groups and sub-categories, the recruiting authority must ensure representation and representativeness to all the persons for whom reservation policy is implemented. In so doing, the University having adopted the method of reservation as per the roster of 100 points as unit of appointment should do the exercise clearly and categorically determining the departments/subjects where the reserved posts or vacancies are available even in the notification inviting applications for appointment. The selections and recruitment should be made keeping in view that only such posts which are advertised for reserved classes are filled up and there should not be any deviation from the same. While resorting to impugned recruitment, University failed to act unarbitrarily and fairly and by resorting to earmarking of reserved posts in departments/subjects after recruitment, violated the principle of equality before law. The method adopted by University while making recruitment and the method adopted to identify the department/subjects where reservation for SCs/STs/BCs may be provided is not sound. The method adopted by the University has resulted in denying the valuable right to public employment of those candidates who could not apply for the recruitment as the advertisement was not made properly.

LEGALITY OF APPOINTMENTS MADE BY THE UNIVERSITY

99. During the course of the arguments, the learned Counsel for the petitioners raised various other contentions. This Court, however, proposes to consider two aspects of the matter, with regard to criteria for determining eligibility and the validity of recruitment made by the University for more posts than advertised in the notification.

Criteria for determining eligibility

100. As per impugned advertisement candidates applying for the posts of lecturers are required to have good academic record with at least 55% marks or an equivalent grade at Masters degree level in the relevant subject from an Indian University or an equivalent degree from foreign university. Candidate also should have cleared the eligibility test for lecturers conducted by University Grants Commission/Central Scientific and Industrial Research. In the case of candidates, who passed National Eligibility Test (NET) conducted jointly by UGC/CSIR for junior research fellowship award, those who have been awarded M. Phil., degrees or likely to be awarded Ph.D., degrees by 31-12-1992 are exempted from clearing the eligibility test conducted by UGC/ CSIR provided such candidates possess a minimum of 55% marks at Masters degree level. As per the advertisement, candidates applying for the posts of Reader must have good academic record with Doctoral Degree or equivalent published work and candidates from outside the university system shall also possess at least 55% marks at Masters degree level. Further, eight years experience of teaching and/or research including upto three years for research degrees is also an essential qualification for the post of

Reader. The last date for receipt of duly filled application forms is 17-11-1992. The advertisement is silent as to by what date a candidate must have the essential qualifications for applying the post of lecturer/ Reader. It is contended by the petitioners that most of the selected candidates among respondents 5 to 208 do not possess essential qualifications by the last date prescribed for receipt of applications and therefore those appointments are illegal. It is specifically pointed out that respondent No. 35 in W.P. No. 4885 of 1995, namely, Mr. G. Sudhakar and respondent No. 149 Dr. Ch. Manju Latha, who are appointed as lecturers in the department of education and in the department of geology respectively do not possess qualifications by 17-11-1992.

101. In support of the contention, reliance is placed on District Collector & Chairman, Vizianagaram, S.W.R.S. Society v. M. Tripura Sundari Devi , Ashok Kumar Sharma v. Chancier Shekhai and State of Haryana v. Anurag Srivastava . In all these judgments, it was held that when applications are invited for recruitment prescribing a particular date as a last date for filing applications, the eligibility of the candidates shall have to be judged with reference to that date and that alone, and that a person who acquires prescribed qualification subsequent to such prescribed date cannot be considered at all for the posts. In Bhupinderpal Singh v. State of Punjab , Dr. Bhanu Prasad Panda v. Chancellor, Sambalpur University , M.A. Murthy v. State of Karnataka and Shankar K. Mandal v. State of Bihar it was held that if recruitment rules provide cut-off date for reckoning the eligibility criteria, the same cannot be departed. Where the rules are silent, but the employment notification prescribed cut-off date, all those who acquire essential qualifications by such prescribed date would alone be eligible and where the recruitment notification also does not prescribe any qualification, the last date for receipt of applications must be treated as cut-off date, by which date candidates should be qualified. The rationale behind these principles was explained by the Supreme Court in Bhupinderpal Singh v. State of Punjab (55 supra), as under:

It was pointed out on behalf of the several appellant-petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications of the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have been continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinized and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut-off date for testing the eligibility qualifications on the principles deducible from the decided cases of this Court and stated hereinabove which have now to be treated as the settled service jurisprudence.

102. In MA. Murthy v. State of Karnataka (57 supra) and Shankar K. Mandal v. State of Bihar (58 supra), the Supreme Court reiterated the earlier law and culled out the principles as under.

(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.

103. In view of settled legal position in this regard, there cannot be any dispute with the principle of law. This Court, however, cannot accept the submission of the learned Counsel for the petitioners that respondent Nos. 35 and 149 are not qualified as on the last date prescribed for receipt of applications nor the learned Counsel is able to demonstrate any illegality in the appointments on this score.

104. In the counter affidavit filed by the Registrar of Andhra University in W.P. No. 4885 of 1995, it is alleged that petitioner No. 6, who applied to the post of lecturer in Zoology did not pass NET and that he was not having M. Phil., or Ph.D., qualification. This is not denied. Learned Counsel for Dr. Ch. Manju Latha - respondent No. 149, Sri P. Krishna Reddy, submits that his client belongs to BC-C, that she submitted her Ph.D., thesis, that she completed her M. Phil., by 31-3-1991 and thus she was qualified. Further, he contended that subsequently she was awarded Ph.D. degree and therefore her appointment cannot be invalidated, as she was very much qualified before the cut-off date. There is no serious challenge to these contentions. Be that as it is, in the counter affidavit filed by the University, all the allegations have been met and these remain uncontroverted though a reply affidavit is filed by the first petitioner in W.P. No. 4885 of 1995. Therefore, we record a finding on this question against the petitioners.

Recruitment to more than advertised posts

105. The learned Counsel for the petitioners contends that the action of the University in filling up more number of posts than the posts advertised and taking up for selections pursuant to impugned notification is violative of Articles 14 and 16 of the Constitution of India. He placed reliance on the decisions of Supreme Court in Hoshiar Singh v. State of Haryana (2 supra), Ashok Kumar v. Chairman, Banking Service Recruitment Board (supra) and Surinder Singh v. State of Punjab (14 supra). The learned Counsel for the fourth respondent in W.P. No. 8835 of 1994 relied on the decisions of the Supreme Court in Prem Singh v. Haryana State Electricity Board (13 supra).

106. Article 16 of the Constitution of India, which is a facet of Article 14 of the Constitution of India, ensures equal opportunity for all citizens in matters relating to public employment or appointment to any office under the State. Constitution ensures equal opportunity in public employment, which only means that all citizens who are qualified for a public post must be given an opportunity of being

considered subject to their eligibility and suitability for a public post. If a competent authority notifies 'X' number of posts, all those who, on the relevant date, are eligible and qualified have an equal opportunity to compete for those posts. If the competent authority pursuant to employment notification recruits 'X plus' number of posts, the same would be depriving equal opportunity for those people who might have got qualifications subsequent to earlier notification or who are likely to complete their qualifying courses with an eye on public employment. Any recruitment to public posts must be made after giving wide publicity by any method known to law. If more number of posts than advertised are recruited, such method would also violate the said principle of giving wide publicity before public employment is resorted to. It may also lead to, in an appropriate case, an inference that the appointing authority withheld those excess posts from being notified to those interested in competing for the posts, thereby violating the principles of fairness and as a necessary corollary rendering such action questionable on grounds of being arbitrary and capricious.

107. In Hoshiar Singh v. State of Haryana (2 supra), on an indent sent by Director General of Police, Haryana Subordinate Service Selection Board advertised eight posts of Inspectors of Police. After conducting selection process, the Board recommended nineteen persons for appointment. The selection was subject matter of batch of writ petitions before the Punjab and Haryana High Court, which quashed the selections. The Supreme Court upheld the judgment of the High Court. On this point, the apex Court made the following observations.

Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional post on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only was not legally sustainable.

(emphasis supplied)

108. In Ashok Kumar v. Chairman, Banking Service Recruitment Board(supra), the Supreme Court laid down that if more number of posts than advertised are filled up, the same would violate Article 14 read with Article 16 of the Constitution of India. It is apt to quote the following observations (Para 5 of AIR):

Article 14 read with Article 16(1) of the Constitution enshrine fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the

notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 14 read with Article 16 (1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and excepted vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection.

(emphasis supplied)

109. In Prem Singh v. Haryana State Electricity Board (13 supra), the Supreme Court after referring to Ashok Kumar Yadav v. State of Haryana , A.V. Bhogeshwarudu v. A.P. Public Service Commission JT(1989)4 SC 130, Hoshiar Singh v. State of Haryana (2 supra), State of Bihar v. Secretariat Assistants Successful Examinees' Union , Gujarat State Deputy Executive Engineers' Association v. State of Gujarat 1994 Supp (2) SCCC 591, State of Bihar v. Madan Mohan Singh 1994 Supp. (3) SCC 308 and Madan Lal v. State of J&K , summarized the law on this branch of service jurisprudence, thus (para 25 of SCC):

From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appoitnments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.

(emphasis supplied)

110. In Surinder Singh v. State of Punjab (14 supra), a three-Judge Bench of the Supreme Court considered the question and laid down that before any advertisement is issued, it would be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies but the authority as a matter of course cannot fill up more posts than advertised. While referring to Prem Singh v. Haryana State Electricity Board (13 supra), the Supreme Court also indicated that if there are exceptional and emergent circumstances existing, the State action cannot be invalidated on the ground that the authority has deviated from the principle of limiting the number of appointments so advertised. It is apposite to excerpt the relevant observations (para 15 of

AIR).

It is in no uncertain words that this Court has held that it would be improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision has been taken. Exercise of such power has to be tested on the touch stone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised.

(emphasis supplied)

111. In the Department of Evironmental Sciences, which is a subject matter of W.P. No. 8835 of 1994, two posts of lecturers were advertised but three vacancies were filled up including that of Dr. Jacob Soloman Raj, the fourth respondent therein. The relevant record of the selection committee is placed before this Court, which would indicate that if only University had filled up two vacancies of lecturers, the fourth respondent would not have been appointed. He could be appointed only because the University filled up three vacancies. The petitioner, Sri P.V.S.V. Prasada Rao, who is also petitioner No. 14 in W.P. No. 4885 of 1995 did not come up for selection. In case assuming that he had been selected in place of Dr. Jacob Soloman Raj, in all probability, he would not been before this Court. Be that as it is, as disclosed in the counter-affidavit filed by the Registrar on behalf of the University, the fourth respondent was empanelled by the selection committee for the post of Reader as well as Lecturer. He could not be appointed for the post of Reader. Aggrieved by which, he filed the writ petition being W.P. No. 3082 of 1994, which is still pending. The lis has come up before this Bench after lapse of almost twelve years. This reason as well as the reason that the fourth respondent challenged his non-appointment as Reader, which is pending, persuade us not to invalidate the appointment of fourth respondent on grounds of equity.

Effect of delay and laches

112. It is the passionate plea of the counsel for respondents 5 to 208 that the Court should not interfere with the recruitment made pursuant to impugned notification. They contend that the writ petitions are filed long after the appointments were made, that similar writ petitions filed were withdrawn without reserving liberty to file fresh writ petitions and that similar writ petition has already been dismissed by Full Bench of this Court. Learned Counsel also contend that having participated in the selection process, petitioners are estopped from questioning the selections made in 1994. Strong reliance is placed on Shish Ram v. State of Haryana AIR 2000 SC 2148 and Gayatri Devi Pansari v. State of Orissa AIR 2000 SC 1531 in support of the contention that the writ petition is not bona fide and that the total percentage of reservation is satisfied. Learned Counsel for respondent No. 153, Sri G.V. Vidya Sagar placed strong reliance on the decisions of the Supreme Court in H.C. Puttaswamy v. Chief Justice of Karnataka High Court (18 supra), Rekha Chaturvedi v. University of Rajasthan (21 supra), Roshni Devi v. State of Haryana (20 supra) and CM. Singh v. H.P. Krishi Vishva Vidyalaya (19 supra) to support the contention that relief should be denied to the petitioners on account of delay and laches. Before dealing with this the general principle of law

regarding the effect of delay and laches on public law remedy may have to be noticed.

113. In private law, where the plaintiff is guilty of acquiescence or laches on his part, relief is denied even though the legal wrong to him is established. While exercising jurisdiction in equity, Courts have adhered to this principle, for delay defeats equities. The public law remedy of writ of Mandamus (for that matter in other writ with exception of Habeas Corpus) broadly accepted the general principals of private law. If denial of relief on the ground of delay and laches does not act adversed to public interest, generally and if the result of the Court writ has an effect on third parties and public administration, the Courts have refused remedy either at the stage of granting leave to seek judicial review or at the stage of considering the petition for judicial review. Dealing with this aspect of Administrative Law, Sir William Wade in Administrative Law (Ninth Edition by H.W.R. Wade & C.F. Forsyth, 2005 pp.658-659) explained as under.

Good administration requires that important decisions, on which many other decisions and actions will depend, should not be able to be set aside along after the events by a successful application or claim for judicial review. For this reason the question of whether there has been 'undue delay in the bringing of a claim as long been important in applying for judicial review....The claim must be made 'promptly' which means that in appropriate cases there may be 'undue delay' even when brought within the three months limit. These cases are, primarily, in where a successful claim would causes 'substantial hardship' or prejudice the rights' of any person or would be 'detrimental to good administration', But the House of Lords has said that the possibility of 'undue delay' within the three months limit may be 'productive of unnecessary uncertainty and practical difficulty'

114. The Constitution Bench of the Supreme Court in R.S. Deodhar v. State of Maharashtra , considered the question whether the relief should be denied on the ground of delay and laches in filing the writ petition. Making reference to Tilikchand Motichand v. H.B. Munshi the Constitution Bench ruled as under.

It must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatuillah, C.J., in Tilokachand Motichand v H.B. Munshi (68 supra), "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit..., It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose.'... It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay.

(emphasis supplied)

115. Therefore, it may be taken as well settled that in all cases the relief to the aggrieved cannot be denied in the writ petition merely on the ground of delay and laches. It is also well settled that if the

delay and laches has the effect of seriously affecting the fundamental rights of the third parties other than impugned decision maker, for valid reasons, the relief can be refused. This Court may also add that the exercise of power of judicial review is with a view to see that public authorities would act within their jurisdictional sphere to ensure smooth administration informed with public welfare. If the grant of relief in a writ petition after long delay is likely to result in throwing the public administration out of gear, relief should be denied. In the background of these general principles the decisions cited by the by the learned Counsel for respondents may now be considered.

116. In H. C. Puttaswamy v. Chief Justice of Karnataka High Court (18 supra), 398 candidates were appointed to Ministerial service in the High Court by the Chief Justice. As per the relevant rules, the appointing authoritywas Karnataka Public Service Commission. On this ground, the Karnataka High Court quashed the appointments. The special Leave petition filed by the appointees was initially dismissed by the Supreme Court directing that the candidates who are unseated may be given relaxation of age as per general recruitment rules. Again those people who are illegally appointed preferred review petition before the Supreme Court. Among other it was urged that the earlier directions of the Supreme Court do not benefit a large number of petitioners that majority of them have crossed the age of forty years, that they have put in more than ten years of service and acquired considerable experience in the administration and it would cause irreparable injury, if they are thrown out of employment. It was also urged that even if the unseated appointees are given age relaxation an permitted to compete afresh, they may not even come anywhere near the zone of selection in spite of their high qualifications and along experience as there would be lakhs of candidates for fresh recruitment. The Supreme Court recalled their earlier order and considered the matter afresh. After referring to relevant rules, apex Court found that appointments made by the Chief justice were manifestly wrong and illegal. The Court then dealt with the plea to validate the appointments. After referring to various earlier judgments In which the Supreme Court allowed the appointees to continue in spite off illegality (see Ashok Kumar Yadav v. State of Haryana (59 supra), State of U.P. v. Rafiquddiri 1987 Supp. SCC 401 : Equivalent AIR 87 and Miss Shainda Hasan v. State of U.P. and allowed the appeals directing that those appointees be treated as regularly appointed with all the benefits of past service, observing that the circumstances justify humanitarian approach and the appellants therein deserve 'justice reached by mercy".

117. In Rekha Chaturvedi v. University of Rajashan (2 supra), the appointments made by the University of Rajasthan for the posts of Assistant professors were challenged, inter alia, on the ground the selected candidates were not having essential qualifications as on the date of advertisement/notification, The appellant before the Supreme Court was successful before the High Court of Rajasthan in getting the appointments declared illegal. The appointments made in 1984 ultimately came to be considered by the Supreme Court in 1993. The Supreme Court declared the appointments as vitiated by patent illegality for the reason that the selection committee took into consideration the requisite qualifications as on the date of selection rather than on the last date of making applications. But Supreme Court did not set aside the selections in spite of illegality. The reasons are found in paragraph 11 of the reported judgment (of SCC):

However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February

1985, We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually as its end must stop forthwith.

118. That equity can be invoked to validate invalid appointments if the holders of the posts continued as such for a long time, is the dicta in Roshni Devi v. State of Haryana (20 supra). The case was concerned with the validity of 1,692 appointments made by service selection Board of Haryana to the posts of clerks. The method and manner of recommending candidates for appointment at random from out of select list came to be considered by the Full Bench of Punjab and Haryana High Court, which declared the Selection Board cannot make selection in excess of the number of posts for which the requisition was it. By reason of the said judgment, the accrued rights of the parties got wiped out. Before the Supreme Court, it was inter alia contended that the High Court could not have nullified the right accrued to the selectees. Considering this aspect of the matter, the Supreme Court while coming to the conclusion that the Selection Board committed gross illegality in selecting and preparing a list of candidates far in excess of requisition, however, did not invalidate the selections. It was noticed that persons appointed from out of the select list has already served more than nine years and that even though they were not appointed strictly in accordance with law, their interest would be seriously jeopardized besides jeopardizing the administration to a great extent If the appointees are Invalidated.

Accordingly, the Supreme Court issued the directions as under.

However, as stated earlier, bearing in mind all the relevant facts and circumstances and bearing in mind the equity in favour of those who have already been appointed from out of the list prepared on 15-10-1989 and have served for more than 9 years, we issue the following directions in substitution of the directions made by the High Court in the impugned judgment:

(1) The appointments already made from out of the list prepared on 15-10-1989 will not be annulled.

(2) The last person who is stated to have been appointed being at Serial 0.4645, persons occupying higher position than him could be considered for appointment to the post of Clerk if there exists any vacancy for them.

(3) The vacancy in this context would mean the vacancies which were available in the State of Haryana prior to the advertisement issued for selecting persons for the said post for the year 1995. It is to be made clear that if no vacancies exist on the aforesaid date, then no further appointment would be made from out of the list prepared on 15-10-1989 notwithstanding the directions of the Punjab and Haryana High Court in Sudesh Kumari v. State of Haryana.

(4) if vacancies did exists in the date as aforementioned, then the appointments from out of the list prepared on 15-10-1989 could be made strictly on the basis of their merit position in the list.

(5) We strongly deprecate the practice of selecting and preparing an unusually large list compared to the vacancy position and the State Government should either amend the recruitment rules in that respect and till then should issue positive to administrative instructions giving the right to the Selection Board to select only some persons in excess than the requisition for which the Board is going to select people.

(6) We also do not approve of the inaction on the part of the State Government in not assailing the judgment of the Punjab and Haryana High Court in Sudesh Kumari case (supra) and now coming up before us making submissions that the judgment is practically incapable of being implemented.

119. In CM. Singh v. H.P. Krishi Vishva Vidyalaya (19 supra), the Court of Himachal Pradesh after following Rekha Chaturvedi v. University of Rajasthan (21 supra), denied the relief to the petitioners in spite of holding that the appointment made by the respondent University was illegal. The relief was denied on the ground that period of nine years had lapsed after impugned appointments. The Supreme Court did not interfere with the order of the High Court but gave the same benefit to the write petitioner who was also selected for the post of Dean observing that he should be given seniority over the candidates selected contravening the law.

120. The question of delay and laches raised in the writ petitions may now be considered with reference to the principles and authorities referred to hereinabove. The impugned notification was issued on 17-10-1992. The selections to various departments/faculties in three different groups went on for a period of more than one year. During this period of selection, the notification was not challenged presumably because some of the petitioners were also expecting to be successful in getting the posts. After the selections are over, the recommmendations were placed before the Board of Management which by a resolution dated 11-03-1994 approved the recommendations. Immediately thereafter, all the respondents 5 to 208 were appointed as Lecturers/Readers and they have been working since then. After appointments are made W.P.No. 8835 of 1994 is filed on 28-04-1994 and W.P. No. 4885 of 1995 was filed on 12-03-1995. The writ petitions were kept pending and they were ultimately dismissed by Full Bench of this Court on 06-10-1999. By that time 4 to 5 years lapsed. Aggrieved by the judgment of the Full Bench, some of the petitioners filed Special leave petitions. The Supreme Court granted leave and disposed of the Special Leave Petition No 8106 of 2003 by order dated 26-09-2003. By that time, almost a decade lapsed and all the selected candidates continued in their posts gaining experience from year to year. After remand, these matters were argued before this Bench in December, 2004. Thus, from the date of issue of impugned notification, by now almost for over a decade, Respondents 5 to 208 have been continuing in the posts of Lecturers/ Readers. It is also brought to our notice that these respondents who were bachelors/ spinsters at the time of appointment, later got married, established families and settled in life. In all probability, all of them have crossed forty years. If at this stage their appointments are set aside, the effect on their life and the effect on the University administration would not be short of catastrophe. As noticed by the Supreme Court in H.C Puttaswamy v. Chief Justice of Karnataka High Court (18 supra), even if the respondents 5 to 208 are again given an

opportunity to compete with the freshers, they would not stand chance of competing with them.

121. There is yet another reason, which is related to the delay and laches. The method adopted by the University is not void ab initio nor it is abuse of law. Given the statistics that percentage of reservation has been well maintained in each group and that wherever the candidates are not available the vacancies are carried forward duly shifting the post from one department to another needy department, it is a fit case where the Court should not nullify the appointments which are more than a decade old. In the course of the Judgment, we have also referred to the test to be applied while scrutinizing the principles of affirmative action adopted by the State. This Court cannot ignore the fact that even those who intended to compete may not be interested now to accept the posts. If they are appointed now they may not even reach the level of Readers.

122. While considering the question of delay and laches, it is also necessary to notice that out of 208 appointments made (these figures are not denied by the petitioners), 26 lecturers joined the University service after resigning from the job they were doing. While the matters are pending before this Court, 16 lecturers left the University job and three retired. What is more? Three lecturers who joined pursuant to impugned selections already died and their dependents are being given pension. If at this stage, these appointments are interfered the human misery to which the respondents 5 to 208 would be subjected to, can well be imagined. Therefore, this is not a case where this Court should exercise discretion in favour of the petitioners.

123. Though initially 20 petitioners approached this Court, petitioner No. 9 withdrew the case. Petitioner No. 4 filed a separate writ petition being W.P.No. 5474 of 1994 and the same was dismissed by this Court, Petitioner No. 14 filed a separate writ petition No. 8835 of 1994 and it is also being disposed of by this order. Petitioner No. 19 figured as petitioner in two separate writ petitions being W.P.Nos. 3125 of 1994 and 3776 of 1995. Further, out of 20 petitioners, three, namely, petitioner Nos. 1,16 and 17 did not even apply for the University posts. There are 9 OC candidates, 7 BC candidates and 4 SC candidates among the petitioners. Therefore, the allegation that the method adopted by University has deprived the candidates belonging to SC/STs/BCs in a gross manner may not be totally true, especially when it is not denied before us that the University appointed 14 ST candidates as against 13 reserved vacancies, 37 SC candidates as against 32 reserved vacancies and 58 BC candidates as against 54 reserved vacancies. The number of vacancies reserved for OC candidates (117) remained the same. Further more, petitioner Nos. 2, 3, 4, 7, 11, 12, 14, 17 and 19 were duly considered by the selection committee for the posts, they applied for and they did not come up for selection. The petitioner Nos. 5, 8, 9, 10, 13, 15 and 18 who belong to BC category were already considered by the selection committee. Out of these, petitioner Nos. 8, 10 and 13 were recommended by the selection committee but would not be appointed as they were placed in lower place in the panel, whereas other BC candidates among the petitioners were not at ail recommended. It is also borne out by record that more meritorious candidates than the petitioners in the respective category were appointed and the evaluation of comparative merit between the selected candidates and non-selected candidates is not within the purview of judicial review. Among the four scheduled caste candidates, namely petitioner Nos. 1, 6, 16 and 20, except petitioner No. 6 who applied for the post of lecturer in Zoology, others cannot be said to have any locus standi as petitioner Nos. 1 and 16 did not apply and petitioner No. 20 withdrew from the case at the stage of

Special Leave petition. These are the glaring facts which cannot be ignored while this Court considers the relief in the matters.

Estoppel and Waiver

124. As noticed above some of the petitioners applied for the posts for which they are qualified. They appeared before the selection committee for the interview. They waited till Board of Management accepted the recommendation of the selection committees. They did not even approach this Court at that stage. They filed the writ petition after the University made appointments pursuant to resolution of the Board of Management questioning the very employment notification itself. Whether principles of estoppel and waiver operate against them? The answer must be in the affirmative. We are supported by three authorities of the Supreme Court on this point.

125. In Manak Lal v. Dr. Prem Chand the Supreme Court considered the principle "nemo debetesse judex in cause propria sua and held that the principal precludes a judge who is interested in the subject matter of dispute from acting as a decision maker and that the principle applies not only to Courts but all the Tribunals and bodies which are given jurisdiction to determine judicially the rights of the parties. It was a case misconduct of Advocate and the Chief justice of Rajasthan High Court had constituted a Tribunal with three members chaired by Sri Chhangani as Chairman, admittedly, Sri Chhangani had filed vakalat for the complainant Dr. Prem Chand Singhv, at whose instance disciplinary proceedings were initiated against Manak Lal, practising advocate under Section 13 of the Legal Practitioners Act. It was pleaded before the Supreme Court that the presence of Sri Chhangani as one of the three members of the tribunal introduces a fatal infirmity in the Constitution of the tribunal and that the delinquent advocate had apprehension that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. On the facts of the case presented before the Apex Court, the principle was not applied to invalidate the decision of the High Court of Rajasthan, which affirmed the tribunal view finding Manak Lal guilty of professional misconduct and removing from practice. The Supreme Court, denied relief to the appellant on the ground of waiver. The Supreme Court noticed that the appellant never raised the question of bias of the members of the tribunal. Hence, relief was denied observing as below:

From a purely commonsense point of view of a layman, the position was patently awkward and so, the argument that the appellant was not conscious of the legal rights in this matter appears to us to be an after-thought. Since the appellant was driven to adopt this untenable position before the High Court in seeking to raise this point for the first time at that stage, we are not surprised that the High Court took the view that the plea had been taken late in order to gain time and to secure a fresh enquiry in the matter. Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

126. In G. Sarana v. Lucknow University , appellant unsuccessfully challenged before Allahabad High Court, the appointment of another person as Professor of Anthropology, inter alia, on the ground that out of three experts in the selection committee, two were biased against him and were in favour of selected candidate. Before the Supreme Court also, the same ground was urged. While laying down the ratio that the authority empowered to decide must act without bias whether conscious or unconscious towards one side or the other side, the Court refused to apply the principle to invalidate the appointment on the ground of estoppel and waiver. It was laid down:

We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee.

(emphasis supplied)

127. In Swaran Lata v. Union of India , the appellant who was on deputation in the State of Haryana as Development Officer in Delhi Small Industries Development Corporation and Prem Lata Dewan, who was also on deputation in the State of Haryana as Instructor at Government Central Crafts Institute for Women, Chandigarh along with others appeared for interview for the post of Principal of the said institute. Prem Lata Dewan was selected and the challenge to her appointment failed before Delhi High Court. Before the Supreme Court, it was contended that Prem Lata Dewan did not possess requisite essential qualifications, that one of the members of the selection committee was biased against the appellant and that post ought to have been filled up on deputation basis. These submissions were rejected by the Supreme Court. It was also held that when the appellant participated in the selections knowing fully well, she cannot be allowed to challenge the appointments when she failed at the selections. It is apt to quote the following observations from the reported judgment:

In any event, the appellant cannot approbate and reprobate. She had willingly, of herown accord, and without any persuasion by anyone, applied for the post, in response to the advertisement issued by the Union Public Service Commission for direct recruitment. She, therefore, took her chance and simply because the Selection Committee did not find her suitable for appointment, she cannot be heard to say that the selection of respondent 6, by direct recruitment through the Commission was invalid, as being contrary to the directions issued by the Central Government under Section 84 of the Act or that the Commission had exceeded its powers by usurping the functions of the Chandigarh Administration, in relaxing the essential qualifications of the candidates called for interview or that respondent 6 was not eligible for appointment inasmuch as she did not possesses the requisite essential qualifications. She fully knew that under the terms of the advertisement, the Commission had reserved to itself the power to relax any of the essential qualifications. With this full knowledge, she applied for the post and she appeared at the interview. We are clearly of the opinion that the appellant is precluded from urging these grounds.

128. In Madanlal v. State of Jammu and Kashmir (64 supra), the Supreme Court considered the question of estoppel precluding a candidate for selections from raising the plea of illegality after the selections are over. While referring to Om Prakash Shukla v. Akhilesh Kumar Shukla , the Supreme Court reiterated the principle as under:

It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.... Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.

(emphasis supplied)

129. A reference may also be made to University of Cochin v. N.S. Kanjoonjamma and Union of India v. N. Chandrasekharan in which the Supreme Court denied relief to non-selectees on the ground of estoppel. This case is filed pro bono publico and therefore estoppel and waiver as such may not exactly operate in the facts and circumstances of the case. Nevertheless it is a relevant factor which cannot be ignored by this Court while considering the relief to the petitioners.

130. Whether the writ petition is bona fide Though the learned Senior counsel, Sri E. Manohar, appearing for some of the respondents contended placing reliance on the decisions of the Supreme Court in Gayatri Devi Pansari v. State of Orissa (66 supra) and Shish Ram v. State of Haryana (65 supra) that the writ petition is not bona fide, the submission was not pressed into service seriously. Therefore, this Court cannot record any definite finding on this question. However, passingly it may be noticed that in Gayatri Devi Pansari v. State of Orissa (66 supra), the Supreme Court laid down that if the quantity of reservation provided for those classes is satisfied, ordinarily other factors would not vitiate the Government selection. In Shish Ram v. State of Haryana (65 supra), the Supreme Court denied the relief to the aggrieved persons on the ground that those persons had enjoyed earlier the benefit of the impugned action and therefore the writ petition was not bona fide. In this case it is brought to our notice that the petitioner Nos. 1 and 16 appeared for selections in 1988 pursuant to employment notification No. 2 of 1988, which provided for similar methodology of providing reservations. Though this aspect of the matter may not have far reaching adverse effect, but still the same cannot be ignored.

CONCLUSION

131. The petitioners came to this Court essentially impeaching the impugned notification T.S. No. 1/92 dated 17-10-1992 on the ground that the same is vitiated by reason of not indicating the reservation for SCs/STs/BCs subjectwise, though they do not dispute that determining percentage of

reservation groupwise is more beneficial to reserved classes. At the time of arguments before this Bench after remand of the matter, the petitioners have raised other grounds, which do not strictly fall for consideration as they were not raised when the Full Bench of this Court earlier considered the matter. Nevertheless this Bench has considered all the aspects in the background of pleadings and the rival submissions. Through the University has provided blanket reservation groupwise in accordance with the relevant Government orders and appointed qualified, suitable and eligible candidates duly providing reservations by adopting the method of under-representation, un-representation and the need based recruitment in each department, in making recruitment after the selections are over, there is arbitrariness in choosing the department where the reservation is provided. It is no doubt that the broad principles of reservation and reservation by following roster of hundred points has been followed, but the method adopted by the University is not certainly best method. For that reason, we record finding against the University but while considering the relief, this Court is not inclined to exercise discretion in favour of the petitioners.

EPILOGUE

132. The implementation of State policy of affirmative action by providing reservation in educational institutions and public employment is a very complex issue. As and when the State refines the methodology of reservation, new problems crop up giving rise to new legal questions, which invariably come before the Courts. On the premise that there is no perfect method of providing reservation, the Court has to adopt such method, which would ensure the maximum benefit to most number of eligible persons seeking the benefit of affirmative action. While doing so, the limitations on the exercise of power of judicial review cannot be ignored for the Court cannot create law but only scrutinize the law in the background of constitutional principles, equality and equal protection of laws. As the constitution endeavours to create equality by dealing with inequalities appropriately, the Court has also to mould the relief in such a manner that the delicate balance among competing equalities is substantially maintained. The legislative intervention sometimes may be an answer to this perennially nagging problem.

133. In the result, for the reasons as above, these writ petitions are dismissed without any order as to costs.