

Smt. Swaran Lata

Vs

Union of India and Others

Civil Appeal No. 628 of 1978

(A. P. Sen, V. R. Krishna Iyer JJ)

16.01.1979

JUDGMENT

SEN, J. -

1. This appeal, by special leave, directed against a judgment of the Delhi High Court dated May 26, 1977, in its appellate jurisdiction reversing the judgment and order of a Single Judge of that Court dated February 13, 1976 mainly raises the question whether the appointment of respondent 6, Smt. Prem Lata Dewan by the Chandigarh Administration to the post of Principal, Government Central Crafts Institute for women, Chandigarh, by direct recruitment through the Union Public Service Commission was invalid, as being contrary to the directions issued by the Central Government under Section 84 of the Punjab Re-organisation Act, 1966.

2. The facts giving rise to this appeal, in short, are as follows :

2A. The Union territory of Chandigarh came into existence under Section 4 of the Punjab Re-organisation Act, 1966, comprising of the city of Chandigarh and the territories specified in the second schedule thereto with effect from November 1, 1966 i.e., the appointed day under Section 2(b).

3. The Government Central Crafts Institute for Women, Chandigarh (hereinafter referred to as the Institute) is run and administered by the Chandigarh Administration and is under the control of the Director of Technical Education, Chandigarh. The Institute is meant for teaching women for a period of two years different crafts such as tailoring, stenography, leather work, embroidery, toy-making, automatic machine embroidery etc.

4. On the appointed day i.e., on November 1, 1966, the post of Principal in the Institute in the pay scale of Rs. 350-900 was held by Smt. Champa Malhotra on deputation from the erstwhile State of Punjab. She was, however, allocated to the State of Haryana under Section 82. By virtue of Section 83, she continued to hold the same post as such i.e., on deputation.

5. In 1973, Smt. Champa Malhotra was reverted to her parent State i.e., the State of Haryana, on account of certain charges of financial irregularities levelled against her by the Chandigarh Administration. At the request of the Chandigarh Administration, in August 1973, the Government of Haryana forwarded a panel of three names including that of the appellant, Smt. Swaran Lata Bhandari, for appointment on deputation against the post of Principal of the Institute, but placed her at No. 3 because she was junior to the other two. On September 11, 1973 the Chandigarh Administration appointed the appellant to be the Principal till further orders. This was because the

Government of Haryana had, in the meanwhile, appointed the appellant as Assistant Director (Women) of the Industrial Training Department, Haryana, on a pay scale of Rs. 350-900 on an ad hoc basis. The names of the other two, though they were seniors to her, could not be considered as according to the Government of India's instructions dated August 16, 1971, they were not drawing salary in the scale of Rs. 350-900 which was the scale for the Principal of the Institute. According to these instructions, it was contemplated that an officer who comes on deputation to the Chandigarh Administration must man a post, the scale of pay of which is equivalent to the scale off pay which the deputationist is drawing in his or her parent State, as otherwise, it would amount to promotion in rank if this was not done.

6. Meanwhile, on August 30, 1973, the Delhi Small Industries Development Corporation addressed a letter to the Government of Haryana requesting for the appellant Smt. Swaran Lata Bhandari, by name, for being sent on deputation for appointment as Assistant Manager (Training) of the Corporation, with a request that the Government may intimate the date by which she could relieved to join her new duties with the Corporation. The Chandigarh Administration received a letter from the Government of Haryana signifying its assent to her being sent on deputation to the Delhi Small Industries Development Corporation. Accordingly, on October 18, 1973, the Director of Technical Education, Chandigarh forwarded this letter to the appellant. On the same day, i.e., in just over a period of one month of her joining the duties as Principal, the appellant gave her consent to take up her new assignment with the Delhi Small Industries Development Corporation, presumably because in addition to the pay, she was also entitled to deputation (duty) allowance as also the Central Government dearness and city compensatory allowances, besides house-rent allowance at the rate of 30 per cent of her pay. She, therefore, abandoned the post of Principal of the Institute because of much better financial prospects at Delhi. On February 26, 1974, the Chandigarh Administration placed her services at the disposal of the Delhi Small Industries Development Corporation. She was relieved of the post of Principal on March 4, 1974 and joined her duties at Delhi on the next day.

7. On March 7, 1974, the Chandigarh Administration had again to request the Government of Haryana to forward a fresh panel of names with the condition that the officers recommended should be in the grade of Rs. 350-900. A long correspondence on the subject ensued between the Chandigarh Administration and the Government of Haryana. On July 7, 1974 the Government of Haryana ultimately wrote to the Chandigarh Administration that it was not possible to forward the names of any woman officers in the grade of Rs. 350-900 in the Industrial Training Department except that of Smt. Champa Malhotra who had recently been reverted by the Chandigarh Administration and was facing a departmental enquiry and, therefore, suggested that the appellant Smt. Swaran Lata Bhandari should instead be appointed as Principal of the Institute on deputation. This was evidently not acceptable to the Chandigarh Administration.

8. Incidentally, the State of Punjab, despite repeated letters by the Chandigarh Administration, never sent up the name of any of its officers for appointment as Principal of the Institute, evidently as it was not interested in the matter. That was because appointments were made by the Chandigarh Administration as a matter of administrative convenience, of officers on deputation either from the State of Punjab or the State of Haryana in the ratio of 60 : 40 in proportion too the population of the two States, with a view too maintain parity between them.

9. Failing in its repeated efforts to get a suitable person appointed on deputation from either the State of Punjab or the State of Haryana, the Chandigarh Administration had no other alternative but to appoint the Principal by direct recruitment through the Union Public Service Commission.

10. Eventually, on August 14, 1974, the Chandigarh Administration forwarded a requisition to the Union Public Service Commission for recruitment to the post of Lady Principal in the Institute stating no rules had been framed to regulate recruitment to the post. The requisition, however, incorporated certain essential qualifications and desired the Commission to advertise the post. On August 20, 1974 the Chandigarh Administration informed the Government of Haryana about its decision to recruit a Lady Principal directly through the Union Public Service Commission, with a request that it may direct the eligible officers from Haryana to apply for the post to the Commission.

11. When the Government of Haryana was informed of the decision, Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department, addressed a letter to Sri B. S. Ojha, Home Secretary, Chandigarh Administration on September 27/30, 1974 stating that the Government of Haryana was surprised at the decision to appoint the Principal by direct recruitment, particularly when the post had throughout been manned by an officer from the State of Haryana, and his Government had recommended the name of the appellant Smt. Swaran Lata Bhandari for the post. He went on to say that it was not understood why she had not been selected for this post particularly when she had worked against this post previously. He went on to advert to the policy of the Chandigarh Administration not to reduce the level of representation of the State of Haryana in the matter of appointments, and expressed his view that the Chandigarh Administration should have no objection to the appointment of the appellant Smt. Swaran Lata Bhandari against the post of Principal in the Institute instead of filling up the post by direct recruitment. He, therefore, requested the Chandigarh Administration to appoint her to the post after withdrawing the advertisement.

12. The Union Public Service Commission, had in the meanwhile, on September 16, 1974, returned the requisition to the Chandigarh Administration, stating that it was not considered expedient to advertise the post with the qualifications as suggested, desiring that a fresh requisition be forwarded showing qualifications fully relevant to the job requirements.

13. On October 9, 1974, Dr. O. S. Sehgal, Director, Technical Education, Chandigarh, addressed a letter to the Home Secretary, Chandigarh Administration stating that though an earnest effort had been made to fill up the post by a regular incumbent on deputation from the States of Haryana and Punjab, it was not possible to get a suitable person, and on account of the failure to appoint a Principal for quite some time, the Institute was in a bad condition, and that though he had given charge to Smt. Malika Arora, Vice Principal, she did not prove effective and consequently, he had to face a lot of difficulties and ultimately had to give the charge to a lecturer. Therefore, keeping in view the totality of the situation obtaining at the Institute, he suggested that the State of Haryana should be requested to lend the services of Smt. Champa Malhotra to take charge as Principal on deputation since she had worked as such for a period of about nine years. He further stated that he had an opportunity to watch her work for a period of about one and a half years and found that she could exercise effective control over the Institution. This recommendation was obviously made in the larger interest of the Institute in order that the work should not suffer.

14. On October 11/14, 1974, Sri B. S. Ojha, Home Secretary, Chandigarh Administration addressed a letter to Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department, in reply to his letter dated September 27/30, 1974 referred to above, and apropos their telephonic talk, stating that the Chandigarh Administration had failed to get a suitable person either from the State of Haryana or Punjab and it was not possible to take the appellant Smt. Swaran Lata Bhandari on deputation as Principal because on her reversion she would be posted in the scale of Rs. 300-500 whereas the scale of the Principal's post in the Institute under the Chandigarh

Administration was Rs. 350-900 and the Government of India's instructions forbid giving on deputation a scale of pay which the deputationist was not holding already in his parent State. Furthermore, he stated that after a review of her performance as Principal of the Institute during her short stay, it was considered that the appellant would not be a suitable person to be appointed as Principal again. He further stated that the entire question had been re-examined and the Chandigarh Administration was still willing to take back Smt. Champa Malhotra who had previously worked as Principal and accordingly made a request that her services may be made available to the Chandigarh Administration for appointment as Principal on deputation. If the Government of Haryana were not agreeable to this course, it was pointed out that the Chandigarh Administration would try to get a suitable person recruited directly through the Union Public Service Commission.

15. On November 27, 1974, the Chandigarh Administration again reminded the Government of Haryana to relieve Smt. Champa Malhotra in order that she may be appointed as Principal on deputation, but the Government of Haryana took no action in the matter.

16. On January 2/4, 1975, the Chandigarh Administration forwarded a fresh requisition revising the qualifications for the post as under :

ESSENTIAL :

(i) Degrees in Technology with one year professional teaching experience in a reputed concern/training institutes; and

(ii) Three years experience in administrative capacity.

OR

(i) Degree in Arts or Science.

(ii) Diploma in Technology of three years duration or Diploma of Industrial Training of two years duration with one year teachers' training/C.T.I.

(iii) Five years professional/teaching experience in a reputed concern/training institute; and

(iv) Three years experience in Administrative capacity.

17. On February 1, 1975, the Union Public Service Commission advertised the post with the aforementioned essential qualifications as suggested. It, however, added a relaxation clause to the following effect :

Qualifications relaxable at Commission's discretion in case of candidates otherwise well-qualified.

The last date for receipt of receipt of applications was March 3, 1979.

18. It appears that on publication of the aforesaid advertisement, the Government of Haryana suddenly woke up. On March 7, 1975, Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department sent a letter to Sri G. V. Gupta, Home Secretary, Chandigarh Administration protesting against the decision taken by the Chandigarh Administration to appoint a

person by direct recruitment. It was pointed out that the Post of Principal had throughout been manned by an officer on deputation from the State of Haryana, and if the post were to be filled up by direct recruitment, it would reduce the representation of the State of Haryana in the matter of appointments in the Chandigarh Administration, and this would be contrary to the policy followed by the Administration itself in that behalf so far. He also protested against the observation made by the Chandigarh Administration that the appellant would not be a suitable person which, according to him, was wholly unjustified and without any basis, because nothing adverse to her had been mentioned in the report of her work for the period during which she functioned as Principal. He accordingly wanted that the Chandigarh Administration should withdraw the requisition placed with the Union Public Service Commission, and appoint instead the appellant Smt. Swaran Lata Bhandari to be the Principal.

19. In response to the said advertisement issued by the Commission for appointment by direct recruitment for the post of Principal of the Institute the appellant, Smt. Swaran Lata Bhandari, holding the post of Development Officer-cum-Assistant Manager, Delhi Small Industries Development Corporation and respondent 6, Smt. Prem Lata Dewan, holding the post of Group Instructor at the Institute, both being officers on deputation from the State of Haryana, applied for the post of the Principal of the Institute.

20. Meanwhile, the Union Public Service Commission had received seven applications. Of these, one was rejected for want of particulars. All the remaining six applicants, including the appellant Smt. Swaran Lata Bhandari and respondent 6, Smt. Prem Lata Dewan were called for interview even though some of them lacked one or other of the qualifications out of the four essential qualifications indicated. Respondent 6, Smt. Prem Lata Dewan was found by the Commission to possess all the essential qualifications except qualification No. (ii) - Diploma in Technology of three years duration. The Commission cleared her for interview by relaxing essential qualification No. (ii) in exercise of its powers conferred under the relaxation clause. It may be mentioned that respondent 6 was not the only candidate who was called for interview by relaxing essential qualifications. There were three other candidates who were also interviewed in relaxation of essential qualifications Nos. (ii) and (iv).

21. The Commission prepared summaries of the qualifications possessed by each of the candidates called for interview and forwarded them to Dr. O. S. Sehgal, Director, Technical Education, Chandigarh, who had been nominated by the Chandigarh Administration to be its representative in the Selection Committee, inviting his comments, if any. The Director of Technical Education made no comments. Thereby, it appears that the Chandigarh Administration agreed to the relaxation of the qualifications in the case of some of the candidates, including that of respondent 6.

22. On April 23, 1975 the Commission interviewed the candidates. Dr. O. S. Sehgal, who was present as the representative of the Chandigarh Administration was associated with the interview board. His function was to apprise the President of the interview board of the precise nature of the duties expected to be performed by the candidate selected for the post. He was in no way connected with the selection of the candidates. The responsibility for selecting the candidates who were summoned for interview rested entirely with the Commission.

23. The Commission by its letter dated May 7, 1975 recommended that respondent 6, Smt. Prem Lata Dewan be appointed to the post of Principal, but before the Administrator, Union territory of Chandigarh could actually pass the order of appointment, the appellant along with Smt. Usha Wadhwa, respondent 7, filed a writ petition before the Delhi High Court on May 15, 1975.

Respondent 6, Smt. Prem Lata Dewan was accordingly appointed as Principal, Government Central Crafts Institute for Women, Chandigarh, subject to the result of the writ petition.

24. The appellant in her writ petition challenged the selection of respondent 6, Smt. Prem Lata Dewan by the Commission for the post of Principal of the Institute on three grounds, namely, (i) the post of Principal, Government Central Crafts Institute for Women, Chandigarh was a "deputation post" which had to be filled in by appointing a person on deputation from the State of Haryana and, therefore, the Chandigarh Administration could not have advertised the post or direct recruitment through the Union Public Service Commission; (ii) the selection of respondent 6, Smt. Prem Lata Dewan by the Union Public Service Commission was vitiated inasmuch as the Selection Board which selected her consisted of Dr. O. S. Sehgal, Director, Technical Education, who was actuated with bias against the appellant and was able to prevail upon the other members to select respondent 6, in order to exclude the appellant as he was interested in not selecting her; and (iii) the relaxation of the essential qualifications of the candidates called for interview by the Commission was wholly arbitrary and illegal. No criteria or guidelines had been laid down as to the extent by which the qualifications would be relaxed while making the selection, nor was there any concurrence of the Chandigarh Administration taken to the relaxation of the qualification of respondent 6. This was evidently done with a view to select respondent 6, Smt. Prem Lata Dewan because of the personal interest of the Director, Technical Education who was present at the interview, and (iv) the relaxation of essential qualifications by the Commission was in violation of the fundamental rights guaranteed by Articles 14 and 16 of the Constitution because respondent 7, Smt. Usha Wadhwa who was equally, if not better, qualified than respondent 6, would have applied for the post, had she known that such essential qualifications would have been relaxed.

25. While repelling the contention of the appellant that the post of Principal of the Institute was a 'deputation post', a Single Judge of the High Court by his judgment dated February 13, 1976, observed that the practice of filling up the post of the Principal by an officer on deputation from the State of Haryana, did not confer on her any right to the post, inasmuch as the arrangement between the Government as to taking a particular officer on deputation from the State of Haryana or Punjab was political in nature and as such cannot be enforced in a court of law much less can it be the foundation of any legal rights to a private party. Furthermore, he refrained from expressing any opinion whether the power of relaxation of the essential qualifications of the candidates could be exercised by the Union Public Service Commission, as according to him, it was a matter which falls within the exclusive jurisdiction of the Commission and not the Court. He observed that it was not possible to lay down the precise extent of relaxation because the Commission was a high-powered body of experts and the adjudging of qualifications must be left to its discretion.

26. The Single Judge, however, struck down the appointment of respondent 6, Smt. Prem Lata Dewan on the ground that the mere presence of Dr. O. S. Sehgal, Director, Technical Education, the representative of the Chandigarh Administration in the interview board, vitiated her appointment, inasmuch as he was actuated with bias against the appellant. Following the decision of this Court in *A. K. Kraipak v. Union of India* ((1969) 2 SCC 262 : (1970) 1 SCR 457), he observed that his presence must have had its own impact on its decision as the influence he has exercised could be imperceptible and his bias was likely to operate it in a subtle manner.

27. On appeal, a Division Bench of the Delhi High Court by its judgment dated May 26, 1977 reversed the judgment of the Single Judge dated February 13, 1976 and held that the observation made by the single Judge against Dr. O. S. Sehgal, Director, Technical Education were wholly uncalled for and were not in any way substantiated by the material on record. It pointed out that no

mala fides were imputed as such against the Union Public Service Commission and as regards Dr. O. S. Sehgal, apart from the mere assertion of mala fides or bias, there were no allegations whatever to support the assertion. Nor are there any facts alleged or particulars given of any previous enmity or grudge, if any, on his part against the appellant. In dealing with the question, it rightly observed that for arriving at a finding as to mala fides, the approach of the court should be to consider all the allegations together, and to find out whether those allegations, when established, are sufficient to prove malice or ill-will, and whether the impugned order is the result of such malice or ill-will.

28. Applying this test, the Division Bench on an over-all consideration of all the facts appearing, held that the allegations of mala fides or bias made by the appellant against Dr. O. S. Sehgal were not made out. In reaching the conclusion that it did, it observed that merely because Sri B. S. Ojha, Home Secretary, Chandigarh Administration addressed a letter to Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department dated October 11/14, 1974 stating that it was not possible to take the appellant on deputation as Principal because on her reversion as Head Mistress she would be posted on a lower scale of Rs. 300-500 which would be contrary to the instructions of the Government of India and also because she was not a suitable person to be appointed as Principal, looking to her past performance as such, it would not unnecessarily give rise to an inference of bias on the part of Dr. O. S. Sehgal, the representative of the Chandigarh Administration on the Selection Committee. In its view, the reasons given were by the Home Secretary on the basis of his own information and it could not be said that the formation of his opinion was only on the information, if any, supplied by Dr. O. S. Sehgal. In view of the letter of the Home Secretary, there was nothing wrong on the part of Dr. O. S. Sehgal in his capacity as Director, Technical Education to send the communication dated October 9, 1974 giving his comments as to the various aspects relating to the Institute and other matters connected therewith. He was obviously not satisfied with the existing arrangement of giving charge of the Principal's post to a subordinate, and having regard to the totality of the situation, and keeping in view the larger interest of the Institute, felt that the Chandigarh Administration should request the Government of Haryana to lend the services of Smt. Champa Malhotra to take charge as Principal of the Institute. More so because the earnest efforts of the Chandigarh Administration to fill up the post by a regular and suitable person on deputation from the States of Punjab and Haryana had failed. It was of the view that this recommendation for taking back Smt. Champa Malhotra, despite the inquiry against her in the past, seemed to be the best under all the circumstances prevailing. The Division Bench held that merely because of this it could not be said that Dr. O. S. Sehgal, Director, Technical Education, was actuated with bias.

29. The Division Bench seemed to agree with the view of the Single Judge that the alleged practice, i.e. the arrangement between the Governments for taking an officer on deputation from the States of Punjab and Haryana as Principal of the Institute was political in nature and did not confer any right on the appellant. It, however, held that the post of Principal of the Institute was not one which the Chandigarh Administration was bound to fill up by taking an officer on deputation. It held that the Chandigarh Administration tried its best to avail of the services of an officer on deputation from the State of Punjab or the State of Haryana, and having failed in their efforts to do so, they had no option but to have a suitable person recruited directly through the Union Public Service Commission. It further held that the selection of the suitable candidates called for interview by the Commission by relaxing one or more essential qualifications was not arbitrary particularly in view of the fact that the Commission had itself prescribed the essential qualifications, and had also reserved to itself in the advertisement the power to relax the qualifications in case of candidates otherwise well-qualified. It rejected the contention of respondent 7, Smt. Usha Wadhwa that there was denial of equal opportunity to apply for the post, by observing that the Commission had

specifically stated in the advertisement that the essential qualifications were relaxable at the Commission's discretion. In its view, the relaxation clause in the advertisement was sufficient communication that all persons otherwise well-qualified were free to apply, and nothing prevented respondent 7 from applying for the post. The Division Bench held that the Commission acted within its right in relaxing essential qualification No. (ii), i.e. Diploma in Technology of three years' duration, in the case of respondent 6, Smt. Prem Lata Dewan. It was not for the High Court to sit in judgment over the discretion exercised by the Commission which was a bona fide exercise of its powers.

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

31. Three subsidiary questions also arise in the appeal, namely : (1) whether the Union Public Service Commission had, in fact, exceeded its power by usurping the functions of the newly created Union Territory of Chandigarh by relaxing the essential qualifications of the candidates while recommending the name of respondent 6, Smt. Prem Lata Dewan for appointment to the post of Principal, and thereby altered the qualifications prescribed by the Chandigarh Administration to regulate recruitment to that post; (2) whether the appointment of respondent 6, Smt. Prem Lata Dewan by the Chandigarh Administration to the post of Principal was illegal, inasmuch as she did not possess the requisite essential qualifications, if any, prescribed for the post in question; and (3) whether the proceedings of the Selection Committee dated April 23, 1975 culminating in the selection of respondent 6, Smt. Prem Lata Dewan as the candidate most suitable for appointment to the post of Principal, were vitiated because Dr. O. S. Sehgal, Director, Technical Education, Chandigarh assisted the Selection Committee in its deliberations during the interview, on account of his bias, if any, against the appellant.

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

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

34. The decision must turn on a construction of the instructions issued on November 4, 1966 by the Government of India, Ministry of Home Affairs, which consequent upon the amendment of the Government of India (Allocation of Business) Rules, 1961 by Order of the President of India dated October 30, 1966 was made responsible for the work of the Union Territory of Chandigarh. These instructions were issued on the basis that personnel for the Union territory of Chandigarh would be

provided on deputation by the two States of Punjab and Haryana. The said instructions, so far material, read as follows :

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

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

The aforesaid communication also conveyed the order of the Government of India, Ministry of Home Affairs, sanctioning the creation and continuance of "existing posts" in the Union territory of Chandigarh from November 1, 1966.

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

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

The aforesaid instructions issued under Section 84 of the Act were supplemental, incidental or consequential provisions for the reorganisation of the States. The instructions were binding on the State Governments of Punjab and Haryana as also on the Chandigarh Administration in the matter of integration of services : *Jagtar Singh v. State of Punjab* ((1972) 1 SCC 171).

36. The key to the interpretation of the aforesaid instructions issued under Section 84 of the Act, obviously lies in the word 'mainly'. According to the ordinary plain meaning, the word "mainly" must, in the context, mean "substantially", "as far as practicable" or "so far as possible". In *Shorter Oxford Dictionary*, 2nd Ed., vol. I, P 1189, the meaning given is : "For the most part; chiefly, principally". In *Webster's New International Dictionary*, 2nd Ed., vol. III, P 1483, more or less the same meaning is given : "Principally, chiefly, in the main".

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

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

comply with such directions.

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

38. While it is not disputed that the power to regulate matters relating to services under the Union of India and under the various States specified in the First Schedule to the Constitution is an exclusive function of the Union and the States under Entry 70, List I and Entry 41, List II of Seventh Schedule read with Article 309, and normally, therefore, it is the exclusive power of the Union and the States to deal with their services either in exercise of their Legislative functions or rule-making powers, or in the absence of any law or rules, in exercise of their executive power under Article 73 and Article 162 of the Constitution, which is co-extensive with their legislative powers to regulate recruitment and conditions of service, nevertheless it is strenuously urged that this power of the Union and of the States which embraces within itself the power to regulate the mode of recruitment of services must yield to the supplemental, incidental or consequential directions issued by the Central Government in relation to the setting up of services in a newly formed State under a law made by the Parliament relatable to Article 3 of the Constitution, in the context of reorganisation of States. To put it more precisely, it is argued that the newly formed State is completely divested of its power to deal with its services. In *Union of India v. P. K. Roy* ((1968) 2 SCR 186 : AIR 1968 SC 850 : (1970) 1 LLJ 633) this Court touched upon the subject, but expressed no final opinion since the question did not directly arise.

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

40. For the reasons already stated, there is no basis for the submission that the supplemental, incidental or consequential provisions which the Parliament is competent to make while enacting a law under Article 2 or 3 have an overriding effect for all times. On the plain words of Article 4 of the Constitution, a provision like Section 84 of the Act, or the directions issued thereunder are only supplemental, incidental or consequential to the scheme of reorganisation of services, which is consequential upon the reorganisation of a State. They cannot be given a wider effect than what is intended.

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

(i) the method of recruitment to the Central Civil Services and posts (Class II, Class III and Class IV) under his administrative control in connection with the affairs of the Union territory of Chandigarh;

(ii) the qualifications necessary for appointment to such services and posts; and

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

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

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

43. It is not obligatory under the proviso to Article 309 to make rules of recruitment etc. before a service can be constituted, or a post created or filled. The State Government has executive power in relation to all matters in respect to which the Legislature of the State has power to make laws. It follows from this that the State Government will have executive powers in respect of List II, Entry 41 of the Seventh Schedule : 'State Public Services'; B. N. Nagarajan v. State of Mysore ((1966) 3 SCR 382 : AIR 1966 SC 1942 : (1967) 1 LLJ 698). There is nothing in the terms of Article 309 of the Constitution which abridges the power of the Executive to act under Article 162 of the Constitution without a law. The same view has been taken by this Court in T. Cajee v. U. Jormanik Siem ((1961) 1 SCR 750 : AIR 1961 SC 276 : (1961) 1 LLJ 652) and Sant Ram Sharma v. State of Rajasthan ((1968) 1 SCR 111 : AIR 1967 SC 1910 : (1968) 2 LLJ 830). The same principle underlies Article 73 of the Constitution in relation to the executive power of the Union.

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

45. Even assuming that the directions issued by the Central Government under Section 84 of the Act were binding on the Chandigarh Administration, it is clear that there is no breach thereof. From the correspondence that passed between the Chandigarh Administration and the Government of Haryana, there can be no doubt whatever that the Chandigarh Administration made their utmost endeavour to get a suitable person on deputation for appointment as Principal of the Institute. A long correspondence on the subject ensued and eventually the Government of Haryana by its letter dated July 7, 1974, informed the Chandigarh Administration that it was not possible to relieve any women officers in the grade of Rs. 350-900 from the Industrial Training Department except that of Smt. Champa Malhotra who was facing an inquiry, with a request that the appellant should instead

be appointed. The Government of Haryana was obviously wrong in insisting upon the appointment of an officer in the scale of Rs. 300-500. This could not obviously be done as it would be contrary to the instructions of the Government of India, Ministry of Home Affairs dated August 16, 1971 that an officer cannot be appointed on deputation to a post that carried a higher grade of pay in the Union Territory of Chandigarh. Thus, the post of Principal in the pay scale of Rs. 350-900 could only be filled by a person on deputation who manned a post the scale of pay of which was equivalent to the scale of pay of the Principal i.e., Rs. 350-900.

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

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

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

47. In response to Government of Haryana's letter dated September 27/30, 1974, the Chandigarh Administration accordingly wrote on October 11/14, 1974, giving detailed reasons why it was not possible to take the appellant on deputation as Principal because on her reversion from her current assignment with the Delhi Small Industries Development Corporation she would be posted as Head Mistress in the scale of Rs. 300-500 whereas the scale of the Principal's post at the Institute was Rs. 350-500 inasmuch as the Government of India's instructions forbid giving a deputationist a scale of pay which she is not already holding in her parent State and also because it was of the opinion that looking to her past performance as Principal during her short stay, it was considered that she would not be a suitable person to be appointed as Principal. The Chandigarh Administration also pointed out that they were still prepared to take back Smt. Champa Malhotra as Principal of the Institute despite the inquiry against her. But, the Government of Haryana maintained complete silence. It disdained from replying to this letter or from relieving Smt. Champa Malhotra.

48. It would, therefore, appear that right from March 7, 1974 till August 14, 1974 when the Chandigarh Administration forwarded requisition to the Union Public Service Commission to advertise the post of direct recruitment, i.e., for nearly 6 months, the Government of Haryana took no action in the matter. During this period, it just persisted in its stand in forwarding a panel of

names of officers carried on the scale of Rs. 300-500 and when it was fully apprised about the true legal position by the Chandigarh Administration expressing their inability to take an officer working in a lower grade or to take back the appellant as Principal of the Institute, it still insisted in sponsoring her name, although this could not be done. This attitude of the Government of Haryana was just inexplicable. Nevertheless, the Chandigarh Administration by their letter dated August 20, 1974, i.e. just within six days of the requisition did what was expected of them and duly informed the Government of Haryana of their decision to recruit a Principal through the Commission and requested that it may direct the eligible officers from Haryana to apply for the posts. In response, the Government of Haryana by its letter dated September 27/30, 1974 registered a protest staking a claim as if the post of Principal of the Institute was a Haryana-quota post, i.e., it could be filled in only by an officer on deputation from the State of Haryana. In spite of repeated letters sent by the Chandigarh Administration, the Government of Punjab also did not send up the name of a suitable officer. In view of these circumstances, it cannot be asserted that there was any breach of the instructions issued by the Central Government under Section 84 of the Act, if at all they were applicable.

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

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

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

In view of this admission, she cannot be heard to say that the Union Public Service, Commission had no such power. Since however the point was argued at length, we think it necessary to deal with it.

51. It is undisputed that there is no statute or regulation having the force of law, by which any qualifications are prescribed for the post of Principal of the Institute. Nor has the Administrator framed any rules to regulate the method of recruitment to such post, or laying down the qualifications necessary for appointment to the post of the conditions of service attached to the post. The Chandigarh Administration accordingly while sending up its requisition dated August 14, 1974 to the Union Public Service Commission, suggested certain essential and desirable qualifications, keeping in view the qualifications prescribed by the Government of India in the Training Manual quoted above. The nature and duties of the post of Principal of the Institute are primarily administrative in nature, but the qualifications prescribed were, however, essentially technical. The Commission, therefore, by its letter dated September 16, 1974 returned the requisition to the Chandigarh Administration, with the observation that they should lay down the qualifications keeping in view the nature and duties of the post. The Chandigarh Administration accordingly on

January 2/4, 1975 forwarded a fresh requisition revising the qualifications for the post, i.e., including 'Administrative Experience for three years'. Thereafter, the Commission on February 1, 1975 advertised the post with the essential qualifications as suggested, with a relaxation clause. It will, therefore, appear that in the instant case, the essential qualifications were prescribed by the Chandigarh Administration in consultation with the Commission and also that the Commission had, in the advertisement issued, reserved to itself the power to relax the qualifications in case of suitable candidates. Where qualifications for eligibility are not prescribed by rules, broad decisions as to the method of recruitment are taken in consultation with the Commission. This requirement was fulfilled in this particular case. The Chandigarh Administration was fully aware that the Commission had reserved to itself the power to relax the essential qualifications. The Commission, therefore, acted within its powers in relaxing the qualifications of the candidates called for interview. In fact, the Chandigarh Administration ratified the action of the Commission in making the appointment. The appointment of respondent 6, Smt. Prem Lata Dewan cannot, therefore, be challenged on the ground that either the Commission had no power to relax the qualifications or that she did not possess the minimum qualifications prescribed for the post.

52. It is, however, strenuously urged on the strength of the decision of the Madhya Pradesh High Court in *Omprakash v. The State of Madhya Pradesh* (AIR 1978 MP 59) that the Union or the State Public Service Commissions cannot select a candidate who does not possess the qualifications prescribed. We do not see how this decision is of any avail to the appellant. On the contrary, while laying down that the Government has to fill up posts by appointing those who are selected by the Public Service Commission and must adhere to the order of merit in the list of candidates sent by the Commission, it observed :

It is entirely in the wisdom and discretion of the Commission what mode or method it would adopt. That is subject to statutory provisions, if any. Where minimum qualifications for eligibility are prescribed by a statute or by the Government, the Public Service Commission cannot select a candidate who does not possess those qualifications.

However, the Public Service Commission is free to screen the applicants, classify them in various categories according to their plus qualifications and/or experience, and call for interview only those candidates who fall within those categories, eliminating others who do not satisfy those criteria.

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

53. We are of the view that the decision of this Court in *Union of India v. S. B. Kohli* ((1973) 3 SCC 592 : 1973 SCC (L&S) 136 : (1973) 3 SCR 117) and that of the Bombay High Court in *Maharashtra State Electricity Board Engineers' Association, Nagpur v. Maharashtra State Electricity Board* (AIR 1968 Bom 65 : 69 Bom LR 674 : (1968) 1 LLJ 197) are both distinguishable on facts. In *S. B. Kohli's* case, this Court was concerned with interpretation of items 2 and 3 of Annexure I to the Second Schedule of the Central Health Service Rules, 1963, as amended, which prescribed "a post-graduate degree in the concerned speciality", and the question was whether the qualification of F.R.C.S. satisfied the qualification prescribed for the post of Professor of Orthopedic Surgery. It was held that the Regulations framed by the Medical Council required that in addition to the general F.R.C.S., a Surgeon must have a diploma in Orthopaedics before he could be appointed a Professor, Reader or Lecturer in Orthopaedics. It was said that to hold otherwise, would mean that a person who has the qualification of F.R.C.S. would be deemed to be specialised in Orthopaedics, without his having any such qualification.

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

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

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

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

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

a discourse or treatise on an art or arts; the terminology of a particular art or subject;

the scientific study of children.

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

Any science or systematic knowledge of the industrial arts.

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

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

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

This argument was based on the provision in the Annexure I to the Second Schedule which states that the qualifications are relaxable at Commission's discretion in the case of candidates otherwise well-qualified. That is no doubt so. But the discretion is given only to the Union Public Service Commission in cases of direct recruitment and not to the Departmental Promotion Committee in cases promotion. As that is the intent of the law it has to be given effect to.

It was then observed :

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

The Union Public Service Commission was, therefore, perhaps not wrong in selecting respondent 6 as a suitable candidate for the post.

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

58. The Division Bench has pointed out, and we think rightly so, that the principles laid down in

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

59. All that is said is that Dr. O. S. Sehgal, Director, Technical Education, 'for reasons best known to him' did not want to appoint the appellant and, therefore, 'must have played an important part at the meeting of the Selection Committee' and was 'able to prevail upon the other members' to select respondent 6 with a view that the appellant who was better qualified should not be selected. The appellant further averred that she had, in her representation dated May 1, 1975, alleged that after the interview she had overheard Dr. O. S. Sehgal talking to the third lady member, saying as to 'how they could take this lady', meaning the appellant, 'as the Principal' and, therefore, she felt that she was a victim of the machination of Dr. Sehgal. There is nothing on record to substantiate such general and vague allegations of the appellant as to mala fides or bias on the part of Dr. Sehgal. Dr. Sehgal in his counter-affidavit has controverted the insinuations made against him. Not a word was said at the hearing about the alleged utterance attributed to him. Nothing was brought to our notice to show ill-will or malice on his part. The entire arguments are built around the two letters, the one written by Dr. O. S. Sehgal dated October 9, 1974 to the Home Secretary, and the other addressed by Sri B. S. Ojha, Home Secretary, Chandigarh Administration to Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department.

60. Dr. A. C. Mathai, Under Secretary, Union Public Service Commission has on affidavit stated that the Commission relaxed some of the essential qualification after applying its own mind, uninfluenced by any extraneous considerations, and denied, in particular, that the Commission was advised by any extraneous authority. Dr. O. S. Sehgal as representative of the Chandigarh Administration was associated only as an expert member and his only duty was to apprise the Chairman of the Selection Committee as to the nature of duties to be performed by the selected candidates. There was nothing wrong in the Union Public Service Commission taking such expert advice. We are informed that the Selection Committee had also selected the appellant for the post of Principal although, on evaluation of comparative merits and demerits placed her as No. 2 while respondent 6 was placed as No. 1. This circumstances clearly shows that the Selection Committee was wholly uninfluenced by any other consideration except merit. In *S. Pratap Singh v. The State of Punjab* (AIR 1964 SC 72 : (1964) 4 SCR 733 : (1966) 1 LLJ 458) this Court laid down that he who seeks to invalidate or nullify any Act or Order, must establish the charge of bad faith and abuse or misuse by Government of its powers. The allegations which are of a personal nature are not borne out at all. Further, the allegations are wholly irrelevant and even if true, would not afford a basis upon which the appellant would be entitled to any relief. On the appellant's own showing, Dr. O. S. Sehgal as Director, Technical Education recorded appreciation of her as Principal of the Institute. This clearly shows that he no particular animus against her.

61. Furthermore, as the Division Bench observes, merely because Sri B. S. Ojha, Home Secretary, Chandigarh Administration addressed a letter to Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department dated October 11/14, 1974 expressing his unwillingness to take the appellant on deputation because she was not holding a substantive rank in the pay scale of Rs. 350-900, contrary to the instructions of the Government of India and also because the Chandigarh Administration felt that looking to her past performance as Principal during her short stay, she was not a suitable person to be appointed as Principal, does not necessarily give rise to an inference of bias on the part of the Chandigarh Administration or Dr. O. S. Sehgal, Director of Technical Education. These were all matters within the competence of the Chandigarh Administration and it was for them to decide the suitability of a candidate for appointment. There is nothing to suggest that the reasons given by the Home Secretary were not his own reasons based upon his own information. It is needless to stress that the Home Secretary to the Government of a State holds a very sensitive position and is the nerve centre of the administration fully conversant with the realities. For aught we know, the Home Secretary had his own sources of information.

62. In any event, the appellant cannot approbate and reprobate. She had willingly, of her own accord, and without any persuasion by anyone, applied for the post, in response to the advertisement issued by the Union Public Service Commission for direct recruitment. She, therefore, took her chance and simply because the Selection Committee did not find her suitable for appointment, she cannot be heard to say that the selection of respondent 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 possess the requisite essential qualifications. She fully knew that under the terms of the advertisement, the Commission had reserved to itself the power to relax any of the essential qualifications. With this full knowledge, she applied for the post and she appeared at the interview. We are clearly of the opinion that the appellant is precluded from urging these grounds.

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

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

is, however, a matter for the Haryana Government to decide.

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

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