

P. K. Ramachandra Iyer and Others

Vs

Union of India and Others

Dr. Y. P. Gupta

Vs

Union of India and Others

Dr. T. S. Raman

Vs

Union of India and Others

Om Prakash Khaudhuri

Vs

Union of India and Others

Writ Petition No. 587 of 1975, Review Petitions Nos. 4 of 1977 and 80 of 1976 and Civil Appeal
No. 1043 of 1981

(Desai, V. B. Eradi JJ)

16.12.1983

JUDGMENT

DESAI, J. -

1. In this group of writ petition, civil appeal, special leave petition and review petitions, a common question of law is raised whether Indian Council of Agricultural Research ('ICAR' for short) and its affiliate Indian Veterinary Research Institute ('IVRI' for short) are either itself the State or such other authority as would be comprehended in the expression 'other authority' in Article 12 of the Constitution ?

2. Re : W.P. No. 587/75 : Petitioner 1 was Professor of Animal Pathology, petitioner 2 was Professor of Animal Genetics and petitioner 3 was Professor of Veterinary Parasitology, all attached to IVRI. Six posts of Professors one each in Animal Pathology, Animal Genetics, Veterinary Parasitology, Animal Nutrition, Bacteriology and Physiology were created on the introduction of the post-graduate wing in IVRI in 1958. At the relevant time the post of Professor carried the scale of Rs. 700-1250. Of the six posts, first mentioned, three posts of Professors were held by the petitioners in their respective disciplines. On the introduction of the scales recommended by the University Grants Commission, the pay scale attached to the post of Professor in IVRI was revised to Rs. 1100-1600. After the upward revision during the year 1970-71, the cadre of Professors in IVRI was expanded

by creating six new posts of Professors in various disciplines. Surprisingly, each of the petitioners, who was already holding post of Professor, was not given the benefit of the upgraded scale attached to the post of Professor while on the other hand the new incumbents recruited in the newly created posts in the year 1970-71 were awarded the revised scale of Rs. 1100-1600. This led to the disturbance in the inter se seniority in the cadre of Professors and manifested an anomalous position that the old incumbents of the posts of Professors such as petitioners, continued in the pre-revised scale of Rs. 700-1250 while the new incumbents were put in the revised scale of Rs. 1100-1600 both having the designation of Professor and there is no appreciable difference in the qualifications attached to the post. When this was brought to the notice of the authorities concerned, the ICAR with the concurrence of the Ministry of Finance resolved as per decision dated April 6, 1972 to award the revised scale of pay attached to the post of Professor to the petitioners, but this was subject to the condition that it would not be automatic but the existing incumbents of posts may be considered for revised scale along with other suitable persons. It was implicit in the condition prescribed that the petitioners will have to stand in competition with other applicants, if there be any, and go through the hazard of a fresh selection for the post each one was already holding. This is the first grievance voiced by the petitioners in the writ petition contending that the petitioners were qualified for the posts of Professors and that each of them was holding the post from 1963, 1970 and 1970 respectively. The petitioners made various representations basing their claim inter alia on fair play, equality of opportunity in the matter of public employment and equal pay for equal work as well as the provision contained in Fundamental Rule 23. The petitioners also contend that they fulfil the minimum qualification prescribed for the post after upward revision of the pay-scale, and they have the requisite experience and that they are performing the same or identical duties as are being performed by newly recruited Professors in sister disciplines and that denial to them of the revised pay scales for the post of Professor apart from being discriminatory and violative of Article 14 is thoroughly arbitrary and unjustified. It appears that pursuant to the decision dated April 6, 1972, the ICAR issued an advertisement on May 21, 1974 inviting applications for the post of Professor in Animal Pathology, Animal Genetics and Veterinary Parasitology in the revised scale of Rs. 1100-1600. These were the posts already held by petitioners. The advertisement set out the essential and desirable qualifications for each post. Petitioners contend that the duties pertaining to the post of Professor in the upgraded scale are the same as performed by the petitioners and that this action of inviting fresh applications for the posts already held by the petitioners disclosed a covert attempt to remove the petitioners from the posts held by them for years. Petitioners further contend that only three posts held by the petitioners have been advertised inviting the applications for fresh recruitment while there were others who were holding posts of Professors in the pre-revised scale and to whom benefit of automatic upward revision was granted and this disclosed not only the bias of the ICAR but also subjected the petitioners to gross discrimination. Serious allegations of bias and mala fide have been made against respondent 6, the Director of IVRI, and Director-General of ICAR, which need not be set out here. It may, however, be stated that though the various functionaries working in IVRI and ICAR are highly qualified persons, professional rivalry had led to such poisoning of the atmosphere and character assassination had become so rampant and the environment had become so suffocating that the Government of India had to appoint a committee presided over by late Shri P. B. Gajendragadkar, retired Chief Justice of the Supreme Court with wide terms of reference which amongst others included the recruitment and personnel policies of ICAR as well as institutes and centres working under it and to suggest measures for their improvement. It is alleged that absolutely incorrect, improper and prejudiced entries are made in confidential reports with a view to harming the career of the persons who have fallen from the grace of the Director and that therefor, the Court should lift the veil of the so-called society and peep into the realities of life. The petitioners accordingly prayed for an appropriate writ, order or direction to

quash the advertisement dated May 21, 1975 inviting applications for the posts of Professors in three subjects already held by the petitioners and to confirm the petitioners in the aforementioned posts and to give them the benefit of the revised scale from the date from which it was given to Professors in sister disciplines and to quash the adverse entries in the confidential reports of the three petitioners. On these averments petitioners filed the present writ petition under Article 32 of the Constitution.

3. Re : S.L.P. No. 2339/75 with R.P. No. 4/77 : One Dr. Y. P. Gupta filed Writ Petition No. 276 of 1972 in the High Court of Delhi questioning the correctness of the order removing him as member of the faculty of the post-graduate school of Indian Agricultural Research Institute ('IARI' for short). Petitioner Dr. Gupta also questioned the validity of appointment of Dr. S. L. Mehta - respondent 6 in the High Court to the post of Senior Biochemist in IARI and claimed that he was entitled to be appointed to that post. This petition was resisted by the respondents primarily on the ground that neither ICAR nor IVRI is either a State or other authority within the meaning of the expression in Article 12 of the Constitution. When the matter came up before the Division Bench of the Delhi High Court, a direction was given that in view of the importance of the questions that arise for determination in the writ petition before the Court and in view of the various decisions which have to be reconciled, the petition should be heard by a larger Bench. Pursuant to this direction, the matter came up before a Bench of five Judges. The larger Bench formulated four questions for its consideration :

1. Do the petitioners have legal right to challenge the appointment of respondent 6 ?
2. Has the Director-General of the ICAR acted in contravention of any legal obligation in making the appointment of respondent 6 ?
3. Has the said appointment been vitiated by the mala fides of Dr. Swaminathan and/or of Dr. Naik ?
4. Was it bad because of the want of qualifications of Dr. Mehta or non-compliance with the prescribed procedure in making it ?

The Court answered the first question against the petitioner holding that ICAR is a society registered under the Societies Registration Act and it is neither a State nor other authority within contemplation of Article 12 of the Constitution. The Court further held that the relation between the petitioner and ICAR is governed by a contract and the rules and the by bye-laws of the Society and ICAR was free to fill the post of Senior Biochemist in any manner it liked. The Court observed that the petitioner being a mere employee, he has no legal right against the employer and in the absence of any statutory element governing his employment, the relation is governed purely by a contract and a breach of contract, if any, would not permit a declaration in favour of the petitioner. Briefly, the Court held that the remedy by way of writ is not available against ICAR. On the second question the Court held that the Director-General owed no obligation or legal duty in making the appointment of the sixth respondent which can be enforced by a writ petition. Questions 3 and 4 were dealt together and it was held that the pleadings were inadequate to permit a finding of mala fide and in the absence of proof there is nothing to show that the appointment of the sixth respondent was vitiated either by mala fides or by non-compliance with procedure. Consistent with these findings, the writ petition of Dr.

Gupta was dismissed. Simultaneously, the writ petition filed by one Dr. T. S. Raman being Writ Petition No. 669/72 was dismissed by the common judgment.

4. Dr. Y. P. Gupta filed S.L.P. No. 2339 of 1975 in this Court. On October 6, 1975, this Court directed a notice to be issued to the respondents to show cause why special leave to appeal should not be granted. When the matter came up again before this Court on July 21, 1976, Mr. Lokur, learned counsel appearing for the ICAR stated to the Court that the respondent-council would consider the question of taking back the petitioner as a member of the post-graduate faculty of IARI. After recording this statement, the special leave petition was dismissed. Petitioner Dr. Gupta filed Review Petition No. 79 of 1976 requesting the Court to review its order dismissing the special leave petition. This review petition was rejected on October 27, 1976. As second review petition was not barred at the relevant time, Dr. Gupta filed Review Petition No. 4/77 which is directed to be heard in the present group of appeal, writ petition and special leave petition.

5. Re : R.P. No. 80 of 1976 : Dr. T. S. Raman whose Writ Petition No. 669 of 1972 was heard along with writ petition of Dr. Gupta and which was also dismissed by the common judgment, filed Special Leave Petition No. 702 of 1976 in this Court. This petition was dismissed by the Court on August 30, 1976. Dr. T. S. Raman filed Review Petition No. 80 of 1976 which is being heard in this group.

6. Re : C.A. No. 1043/81 : Appellant Dr. Om Prakash Khaudhuri filed Writ Petition No. 553 of 1980 in the High Court of Delhi alleging that he was selected for the post of Senior Computer with Indian Agricultural Statistics Research Institute, an affiliate of ICAR. ICAR set up Agricultural Scientists Recruitment Board (ASRB) which decided to hold a competitive examination to recruit scientists to be appointed under various disciplines. ICAR framed rules setting out the terms and conditions for admission to the competitive examination. Appellant applied for admission to the competitive examination in 'Agricultural Statistics' discipline. The written test was held from February 1 to 4, 1978. The Board in charge of the selection and appointment on the comparative merits as evidenced by the performance in the written examination selected 20 candidates including the appellant as having obtained the prescribed qualifying marks for the purpose of viva voce examination which was held on April 10 and 11, 1978. After the viva voce test, 13 candidates were declared as successful and were offered appointment as scientists in the discipline 'Agricultural Statistics'. The appellant failed to qualify for the same. According to the appellant, 21 vacancies remained unfilled. Appellant contends that he had secured 364 marks out of 600 in the written examination and 38 marks out of 100 in the viva voce test. It is alleged that the appellant was declared unsuccessful because the Board in charge of the examination has by itself determined without any authority that anyone who obtained less than 40 marks at the viva voce examination would not be eligible for selection for the posts. It is therefore, contended that the action of the Board in fixing minimum qualifying marks in the viva voce examination and basing the final selection on this arbitrarily fixed criterion lacks both the authority of law and rules and that the Board has acted arbitrarily and without the authority of law. Appellant accordingly made representations but failed to evoke a sympathetic reply, and therefore, the appellant filed a writ petition in the High Court of Delhi which was dismissed *limine* on the ground that the writ petition against the respondent was not maintainable. Hence this appeal by special leave.

7. Ordinarily one would sincerely deplore the delay in disposal of a problem brought before the court, but occasionally, one comes across a case in which the sheer passage of time and the fast removing scenario of changing pattern of law resolves the dispute to some extent.

8. Mr. Lokur appearing for ICAR raised a preliminary objection that ICAR is not an agency or instrumentality of the State and therefore it is not comprehended in the expression 'other authority' within the meaning of the expression in Article 12 of the Constitution and therefore the High Court was fully justified in throwing out the petition at the threshold. Mr. Lokur directed a frontal attack drawing sustenance from the decision of Delhi High Court that ICAR being a society registered under the Societies Registration Act and being neither a State nor other authority within the contemplation of Article 12 nor an instrumentality of the State, writ jurisdiction of the High Court cannot be invoked against it. *Sabhajit Tewary v. Union of India* ((1975) 3 SCR 616 : (1975) 1 SCC 485 : 1975 SCC (L&S) 99 : AIR 1975 SC 1329 : (1975) 1 LLJ 374) was the sheet anchor of Mr. Lokur's extensive submission because in that case a Constitution Bench presided over by the then Chief Justice ruled that the Council of Scientific and Industrial Research, a society registered under the Societies Registration Act, was neither a State nor other authority within the contemplation of Article 12 and therefore, the writ petition was held not to be maintainable against it. And even though this matter had become parheard in 1980 and the hearing was resumed in 1983 before a different Bench, the vigour of the sustained attack was not the least dimmed even though the law expanding the width and ambit of the expression 'State' and 'other authority' in Article 12 had taken strides culminating in *Ajay Hasia v. Khalid Mujib Sehravardi* ((1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1981 SC 487 : (1981) 1 LLJ 103). And Mr. Lokur continued his submission with unabated fury even though the learned Solicitor-General Shri K. Parasharan appearing for the Union of India fairly conceded that in view of the circumstances disclosed in the case and the trend of the decision, it is not possible to contend that ICAR and its affiliates IVRI and IARI would not be other authority being instrumentalities of the State and against which writ jurisdiction could be invoked.

9. A very brief resume of the history of ICAR commencing from its initial set-up and its development into its present position would show that as a matter of form, it is a society registered under the Societies Registration Act but substantially then set up it was an adjunct of the Government of India and has not undergone any noteworthy change. On the advent of the provincial autonomy under the Government of India Act, 1919, 'agriculture' and 'animal husbandry' came under the heading 'transferred subject' with the result that they came within the exclusive jurisdiction of the Provincial Government. Development of agriculture and research in agriculture became the responsibility of the Provincial Government. Even then a Royal Commission on Agriculture was constituted in 1926 to enquire into the agricultural set-up and the rural economy of the country and to make recommendations to consider what firm steps are necessary to be taken by the Central Government in this behalf. The Commission in its report recommended the setting up of Imperial Council of Agricultural Research. Acting upon this recommendation, Government of India sent a telegram to the Secretary of State on April 24, 1929 informing the latter that the process of setting up of the Council is under way and that when set up Council would be society. On May 9, 1929, Secretary of State approved the proposal of the Government of India subject to variations, mentioned therein. By its Resolution dated May 23, 1929, the Central Government directed that Imperial Council of Agricultural Research should be registered as a society under the Registration of Societies Act, XXI of 1860. The Resolution further provided that with respect to the grant to be made to the Council to meet the cost of staff, establishment etc., the Government of India decided that for reasons of administrative convenience, it should be in the same position as a department of the Government of India Secretariat. The Imperial Council of Agricultural Research was set up in June, 1929. A direction was also given that the research institutes were to be maintained by the Council. In their counter-affidavit filed in the High Court of Delhi it was conceded in paragraph 27 that the Imperial Council of Agricultural Research should in future be an attached office and not the

department of the Government to be entirely manned by Government staff and the Secretariat staff of the Council was to be paid from the grant to be given by the Government for its administration and they would be Government of servant and the Secretariat would be department of the Government of India. In July, 1929, ICAR was registered as a society with its office in the Secretariat as an attached office of the Secretariat. By the Resolution dated August 4, 1930, Government of India directed that for reasons of administrative convenience "the governor-General in Council has now decided that the Imperial Council of Agricultural Research Department, as the Secretariat of the Council will henceforth be designated, should be a regular department if the Government of India Secretariat under the Hon'ble Member in charge of the Department of Education, Health and Lands". A note was submitted on December 29, 1937 to the then Viceroy concerning the status and position of the ICAR as a department of the Government in which it was recommended that ICAR should not only be maintained as a distinct entity independent of the Government of India and with a view to achieving this position, the office of the ICAR should not in future be a department of the Government of India but should be an attached office. This proposal was approved by the Viceroy on January 14, 1938 simultaneously expressing his anxiety to sustain the prestige of ICAR. The next step is one taken by the Resolution dated January 5, 1939 by which the Government of India modified the status of the ICAR from the department of the Secretariat to one of an attached office of the Government of India. A letter was addressed to the High Commissioner for India in London on January 14, 1939 intimating to him that the Secretariat of the ICAR will cease to be a department of the Government of India and will be an attached office under the Department of Education, Health and Lands with effect from January 15, 1939. Till then recruitment to various posts in ICAR was made through Federal Public Service Commission and this was to be continued even after the change in the status of ICAR as an attached office as evidenced by the letter dated August 24, 1938 by the Joint Security to Government of India to the Federal public Service Commission. A bill was introduced in the Central Legislature styled as the "Agricultural Produce Cess Bill, 1949". The statement of object and reasons accompanying the bill recited that the Central Government have provided grants to the tune of Rs. 84 lakhs for the expenditure of the Council and took notice of the fact that the Council has practically no source of income other than the contribution from the Central Revenue which may be unstable depending upon the state of finances of the Central Government. It was further observed that in order to place Council on a more secured financial position, it has been decided to levy a cess at the rate of 1/2 per cent on the value of certain agricultural commodities and the proceeds of the proposed cess are estimated to amount in a normal year to about Rs. 14 lakhs. The bill was moved. In the debate upon the bill, a statement was made on behalf of the Government of India that the Central Legislature will retain its full right of interpellation and of moving resolutions and will still vote on the grant of the permanent staff, and some of the activities of the Council. In other words, and assurance was given that the Central Legislative Assembly will have positive control over the affairs of the Council to the same extent and degree when it was a department or an attached office of the Government of India. On the advent of independence the Imperial Council of Agricultural Research was redesignated as Indian Council of Agricultural Research. With effect from April 1, 1966, administrative control over IARI and IVRI and other institutes was transferred to ICAR simultaneously placing the Government staff of the institutes at the disposal of ICAR as on foreign service. This is evidenced by a communication dated April 19, 1966 addressed by the Ministry of Agriculture, Food, Community Development and Co-operation to the Director of Community Development and Co-operation to the Director of Central Research Institutes. An option was given to the members of the staff of the Institutes, administrative control of which was transferred to ICAR and the date for exercising the option was extended by the communication dated November 9, 1966. In the mean time, the Government of India enforced the new rules framed by the ICAR

effective from January 10, 1966 keeping Rule 18 in abeyance. With the change in the status of the ICAR, Department of Agricultural Research and Education (DARE' for short) was set up in the Ministry of Agriculture and it came into existence on December 15, 1973. This Department was set up with a view to providing necessary Government linkage with ICAR. The major function of the Department was to look after all aspects of agricultural research and education involving co-ordination between Central and State agencies; to attend to all matters relating to the ICAR; and to attend to all matters concerning the development of new technology in agriculture, animal husbandry and fisheries, including such functions as plant and animal introduction and exploration, and soil and land use survey and planning. By this very Resolution, the Director-General of ICAR was concurrently designated as Secretary to Government of India in the DARE. The position of ICAR was clarified to the effect that in the reorganised set-up, the ICAR will have the autonomy essential for the effective functioning of a scientific organisation and deal with sister departments of the Central Government, with State Government and also with international agricultural research centers through the DARE. Rule 18 of the ICAR rules which was kept in abeyance on January 10, 1966 was brought into operation in its entirety effective from April 1, 1974 as per communication dated March 30, 1974 by the Ministry of Agriculture to the Secretary, ICAR. The consequence of Rule 18 becoming operative was that the Secretariat of ICAR ceased to be an attached office of the Ministry of Food and Agriculture and the Society shall function as "wholly financed and controlled by the Society ". This last sentence hardly makes any sense. Till rule 18 was kept in abeyance, recruitment to ICAR was done through the Union Public Service Commission as evidenced by the letter dated August, 24, 1938 of the India to the Secretary, Federal Public Service Commission, Simla. Rule 18 as stated earlier became operative from April 1, 1947. Rule 18 provides that "the Society shall establish and maintain its own office, research institutes and laboratories. The appointment to the various posts under the Society's establishment was to be made in accordance with the recruitment rules framed for the purpose by the governing body with the approval of the Government of India".

10. Apart from the criteria devised by the judicial dicta the very birth and its continued existence over half a century and its present position would leave no one in doubt that ICAR is almost an inseparable adjunct of the Government of India having an outward form of being a society; it could be styled as a society set up by the State and therefore, would be an instrumentality of the State.

11. ICAR started as a department of the Government of India having an office in the Secretariat even though it was a society registered under the Societies Registration Act. It was wholly financed by the Government of India. Its budget was voted upon a part of the expenses incurred in the Ministry of Agriculture. Even when its status underwent a change, it was declared as an attached office of the Government of India. The control of the Government of India permeates through all its activities and it is the body to which the Government of India transferred research institutes set up by it. In order to make it financially viable, a cess was levied meaning thereby that the taxation power of the State was invoked, and the proceeds of the tax were to be handed over to ICAR for its use. At no stage, the control of the government of India ever flinched and since its inception it was set up to carry out the recommendations of the Royal Commission on Agriculture. In our opinion, this by itself is sufficient to make it an instrumentality of the State.

12. It is however urged that the Council of Scientific and Industrial Research ('CSIR' for short) a society registered under the Societies Registration Act and having an identical set-up as well as constitution, was held not to be an instrumentality of the State or 'other authority' under Article 12. In *Sabhajit Tewary case* ((1975) 3 SCR 616 : (1975) 1 SCC 485 : 1975 SCC (L&S) 99 : AIR 1975 SC 1329 : (1975) 1 LLJ 374), this Court held that the CSIR did not have a statutory character like

the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation, and it was a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the governing or that the Government may terminate the membership will not according to this Court establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of scientific researches, establishment of development and assistance to special institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner, and these aspects are not sufficient to reach the conclusion that the society was an agency or instrumentality of the Government. This Court also referred to some decisions which have held that the companies incorporated under the Companies Act and the employees of these companies do not enjoy the protection available to Government servants as contemplated in Article 311. This Court accordingly concluded that CSIR is not an instrumentality of the Government comprehended in the expression 'other authority' within the meaning of Article 12 of the Constitution, and the writ jurisdiction cannot be invoked against it. Much water has flown down the Jamuna since the dicta in *Sabhajit Tewary case* ((1975) 3 SCR 616 : (1975) 1 SCC 485 : 1975 SCC (L&S) 99 : AIR 1975 SC 1329 : (1975) 1 LLJ 374), and conceding that it is not specifically overruled in later decision, its ratio is considerably watered down so as to be a decision confined to its own facts. The case is wholly distinguishable on the facts apart from the later indicia formulated by the Court for ascertaining whether a body is 'other authority' within the meaning of Article 12. A mere comparison of history of ICAR as extensively set out hereinbefore and the setting up of CSIR would clearly show that ICAR came into existence as a department of the Government, to be an attached office of the Government even though it was registered as a society and wholly financed by the Government and the taxing power of the State was invoked to make it financially viable and to which independent research institutes set up by the Government were transferred. None of these features was present in the case of CSIR and therefore, the decision in *Sabhajit Tewary case* ((1975) 1 SCC 485 : 1975 SCC (L&S) 99 : AIR 1975 SC 1329 : (1975) 1 LLJ 374), would render no assistance and would be clearly distinguishable.

13. The ratio, if any, of the decision in *Sabhajit Tewary case* ((1975) 1 SCC 485 : 1975 SCC (L&S) 99 : AIR 1975 SC 1329 : (1975) 1 LLJ 374) was examined by a Constitution Bench of this Court in *Ajay Hasia case* ((1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1981 SC 487 : (1981) 1 LLJ 103) and it was held that that decision is not an authority for the proposition that a society registered under the Societies Registration Act, 1860 can never be regarded as an authority within the meaning of Article 12. The Court further held that having regard to the various features enumerated in the judgment in *Sabhajit Tewary case* ((1975) 1 SCC 485 : 1975 SCC (L&S) 99 : AIR 1975 SC 1329 : (1975) 1 LLJ 374), the conclusion was reached that the CSIR was not an agency of the Government, but the Court did not rest its conclusion on the sole ground that CSIR was a society registered under the Societies Registration Act, 1860, and on the contrary proceeded to consider various other features of the Council for arriving at the conclusion that it was not an agency of the Government and therefore, if it was not an authority for the proposition that a society registered under the Societies Registration Act for that reason alone would not be comprehended in the expression 'other authority'. In *Ajay Hasia case* ((1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1975 SC 1329 : (1975) 1 LLJ 374) this Court after taking note of the decisions in *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) 3 SCR 1041 at 1024 : (1979) 3 SCC 489, 511-12 : AIR 1979 SC 1628) and *U. P. Warehousing Corporation v. Vijay Narayana* ((1980) 3 SCC 459 : 1980 SCC (L&S) 453 : (1980) 1 LLJ 222), and after and

after extracting various indicia for determining whether the particular body was an agency or instrumentality of the State within the meaning of Article 12, proceeded to examine whether the society which had established Regional Engineering College, Srinagar and which was registered under the Jammu and Kashmir Registration of Societies Act, 1898 was an instrumentality or agency of the State and would be comprehended in the expression 'other authority' in Article 12. In this connection, the Court observed as under : (SCC p. 739, para 15)

It is in the light of this of this discussion that we must now proceed to examine whether the Society in the present case is an "authority" falling within the definition of "State in Article 12. It is an instrumentality or agency of the Government ? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu and Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The Rules to be made by society are also required to have the prior approval of the State and the Central Governments. The Rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Government for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a members representing the State or the Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which in charge of general superintendence, direction an control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision of approval, the Central Government also, have rule control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of ray, C.J. in Sukhdev Singh Case ((1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331 : 45 Com Cas 285), the voice is that of the State and the Central Governments and are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or the agency of the State and the Central Government and it is an 'authority' within the meaning of Article 12.

14. Applying the criteria, there is little doubt that ICAR is an instrumentality or the agency of the State. It came into existence as an integral department of the Government of India and later on became an attached office of the Central Government. The composition of the ICAR as evidenced by Rule 3 could not have been more governmental in character than any department of the Government. The governing body of the Society would consist of a President of the Society, who is none other than the Cabinet Minister of the Government of India for the time being in charge of Agriculture; the Director-General, a distinguished scientist to be appointed by Government of India would be the Vice-President and the Principal Executive Officer of the Society. He is concurrently appointed as Security to Government of India. Other members of the governing body are eminent scientists not exceeding nine in number to be appointed by the President that is the Minister; not

more than five persons for their interest in agriculture to be appointed by the President that is that Minister, three members of Parliament and Additional/Joint Secretary to the Government of India in the Department of Agriculture to be nominated by that Department, one person, appointed by the Government of India to represent the Central Ministry/ Department concerned with the subject of Scientific Research and the Financial Adviser of Society. There is none outside the Government in the governing body. Rule 91 deals with the finances and funds of the Society and the sources of income are the cess levied by the Government under the Agricultural Produce Cess Act and the recurring and non-recurring grants from the Government of India. The Rules of the Society were initially framed by the Government of India and rule 92 makes it abundantly clear that they can neither be altered nor amended except with the sanction of the Government of India. Rule 100 shows that the Rules at the relevant time in force became operative after they were approved by the Government of India, and came into force from, the date to be specified by the Government of India, Rule 93 provides for audit of the accounts of the Society by such person or persons as may be nominated by the Central Government. Rule 94 provides that the annual Report of the proceedings of the Society and of all work undertaken during the years shall be prepared by the governing body for the information of the Government of India and the members of the society, and the report and the audited accounts of the Society along with the auditor's report thereon shall be placed before the Society at the Annual General Meeting and also on the table to of the Houses of Parliament. Rule 18 provides that the appointment to the various posts under the Society shall be made in accordance with the Recruitment Rules framed for the purpose by the governing body with the prior approval of the Government of India but prior thereto it was by the Union Public Service Commission. The administrative and the financial control of the Government is all pervasive. The rule and bye-laws of the Society can be framed, amended or repealed with the sanction of the Government of India. The case before us is much stronger than the one considered by this Court in the case of Ajay Hasia ((1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1981 SC 487 : (1981) 1 LLJ 103) and therefore, the conclusion is inescapable that the Society is an instrumentality or agency of the Central Government and therefore, it is 'other authority' within the meaning of the expression in Article 12. As a necessary corollary the writ jurisdiction can be invoked against it and therefore the decision of Delhi High Court must be reversed on this point. The preliminary objection accordingly overruled.

15. Having rejected the preliminary objection, we must now proceed to examine the contention raised in each petition and appeal on merits.

16. Before we proceed to examine the contentions on merits, unhappy though it may appear to be, and howsoever one would like to avoid reference to it, it is inevitable that one must take note of the deplorable state of affairs in the administration of the affairs of ICAR and the uncongenial atmosphere in which the highly qualified agricultural scientists in this country have to work. ICAR was set up for undertaking scientific research in Agriculture, Animal Husbandry and allied subjects on which the entire economy of this country revolved till the advent of industrial revolution. It was set up with a view to imparting speed and momentum to research in Agriculture and allied subjects so that the country may move from the middle ages to the modern methods in agricultural technology. Unfortunately, since its inception, the domestic atmosphere has not proved congenial to the flowering of the genius of the country's best talent in agricultural research. This came to light when on May 5, 1972, newspapers all over the country flashed the tragic news that a young agricultural scientist, Dr. V. H. Shah who was working as Senior Agronomist and Associate Project Co-ordinator in the IVRI had committed suicide by hanging himself in his residence the previous night. There was a commotion in the Parliament and during the debate in the House, Members of Parliament regretfully referred to previous suicides committed by agricultural scientists, one such

being Dr. M. T. Joseph, Teaching Assistant, Division of Entomology, IARI who had committed suicide on January 5, 1960. These were not stray incidents but the outcome of persecution, torture and harassment emanating from the polluted environment in ICAR and its affiliates. The then Minister for Food and Agriculture stated in the Parliament that the Government of India was not happy with the procedure of selection of personnel in the ICAR and proceeded to inform the House that they have not been too happy with the present system of recruitment which necessitates a scientist applying for posts and being interviewed by selection committees throughout his working career because the system inevitably provides frequent occasions for disappointment leading to frustration. Two decades thereafter we are constrained to note that the things have not improved at all. The ICAR and the Institutes seem to be so backward looking in their approach to the members of the staff that as late as in 1983 in considerable time of this Court was frankly wasted in disposing of the preliminary objection on behalf of the ICAR that it is not amenable to this Court's writ jurisdiction which would imply that they have skeletons to hide and shun their exposure to the Court's examination of the internal affairs. To continue the narrative, a committee was appointed under the Chairmanship of Shri P. B. Gajendragadkar, retired Chief Justice of India and Vice-Chancellor, University of Bombay and at the relevant time Chairman, Law Commission with wide terms of reference inter alia to enquire into the recruitment policies of ICAR and to review the recruitment and personnel policies of ICAR, Institutes and Centers working under it and to suggest measures for the improvement. This committee submitted its report and we take note of only one of its findings which reads as under :

All these complaints have been echoed by several scientists who met the Committee. In the opinion of the Committee, these complaints have some substance. The Panel of Advisers also hold the same opinion. The Committee is of the view that most of these complaints are due to improper working conditions in the Divisions. A scientist belongs to a Division where he carries out his work. The atmosphere in the Division and the Institute should be conducive to research activity. (Report of the ICAR Enquiry Committee, 1973, Chapter VII page 54)

At another stage, the Committee has observed that : "in the present circumstance where a crisis of character and confidence seems to have overtaken the entire administration of the ICAR, we think it is absolutely necessary that recruitment of personnel in all the Institutes with the ICAR should revert to the UPSC". The Committee made it clear, it made this recommendation, because it was satisfied that there is obvious dissatisfaction with the recruitment made from 1966 onwards and the Report when browsed through would leave an inextinguishable impression on the reader that the Committee was dissatisfied with internal atmosphere in ICAR and that there was an amount of dissatisfaction about the recruitment policy and that it was such a perceived reality that it would be idle to ignore the same. Even the Director-General, who is concurrently also the Secretary to the DARE in charge of ICAR conceded before the Committee that it would be better if, for some time, the recruitment is entrusted to some outside agency. (Report of the ICAR Enquiry Committee, 1973 Chapter II page 12) In Chapter XI of the Report, the Committee noted that the complaints made against the Head of the Division about not giving adequate facilities for work and the lack of academic atmosphere and an absence of domestic approach permitting free discussion on research projects and results obtained were genuine and they required to be remedied. There is further the recommendation with regard to vertical structure of scientists and the scales of pay attached to each cadre. It is unhappy to note that things have hardly improved since the Report of the Committee because in the first writ petition, petitioners were again to be exposed to hazards of a fresh selection and the complaint of Dr. Y. P. Gupta is essentially the same as noticed and commented upon by the Committee.

17. Re : W.P. No. 587/75 : In with writ petition the substantial grievance is that even though the three petitioners were respectively holding the post of Professor in Animal Pathology, Animal Genetics and Veterinary Parasitology from 1963, 1970 and 1970 respectively, when the pay-scale for the post of Professor on the recommendation of the University Grants Commission underwent an upward revision to Rs. 1100-1600, in ICAR instead of straightway granting the scale to the petitioners, the holders of the posts of Professors, proceeded to issue an advertisement on May 21, 1974 inviting fresh application for the post of Professor in the three subjects in which the petitioners were already holding the post of Professor and simultaneously appointed some to there indifferent subjects and disciplines as Professors and gave them the revised scale while the petitioner were left to languish in the old scale. According to the petitioners, apart form gross discrimination in the matter of equal pay for equal works, the direct consequence of this unfair and arbitrary action of the third respondent was the adverse affection in the seniority in the cadre of Professors because those who were appointed in the revised scale scored a march over the petitioners who continued to languish in the pre-revised scales. Petitioner contend that the situation is recreated which was adversely commented upon by the Minister in the Parliament that the recruitment policy adopted by ICAR necessitates a scientist to apply for posts and being interviewed by selection committee with attendant hazard and consequent frustration. Petitioners therefore pray firstly for canceling the advertisement issued for the purpose of inviting applications for the posts already held by the and secondly for granting them equality of treatment in the matter of pay-scales with other Professors with whom they stand on terms of equality and are better equipped because of longer experience. Petitioners say that in 1970-1971 six posts of Professor were created in the revised scale of Rs. 1100-1600 at IVRI in the discipline of Poultry Science, Poultry Pathology, Veterinary Public Health (Calcutta Center of IVRI), Biochemistry, Epidemiology and Veterinary Public Health (IVRI Center). The revised scale was sanctioned for these newly created posts pursuant to the recommendation of the University Grants Commission. Lets it be made distinctly clear that the revised scales were meant for that posts of Professor in IVRI not for the post in any particular discipline. Petitioners were holding posts of Professor in IVRI, and therefore the petitioners contend that the posts of Professor held by them would be governed by the revised scale effective from the date on which new posts were created and filled in, in the revised scale. Respondents' response to this contention is that ICAR informed the Director of IVRI as per its letter dated January 20, 1971 that three posts of Professor in the scale of Rs. 1100-1600 in Veterinary Bacteriology, Animal Nutrition and Animal Genetics have been sanctioned subject to the condition that the existing posts of Professor obviously in the same disciplines in the scale of Rs. 700-1250 stand abolished. Shorn of embellishment, it would mean that the posts in the aforementioned three subjects shall henceforth carry the revised scale of Rs. 1100-1600. The respondents assert that the revised scale was not to be automatically granted to the existing holders of the posts but they would be considered with other applicants for appointment in the higher scales, if they are otherwise suitable. It was also said that in the letter of appointment as Professor each of the petitioner was informed that as the post of Professor is being upgraded, each of them will have to fact selection test. Letter of appointment dated March 25, 1970 in respect of petitioner 2 though relied upon was not on the record but when produced in the course of hearing with an affidavit, it belied the statement. There is nothing in the letter of appointment of each of the petitioners that when the revised scale for the post of Professor will be introduced, the incumbent of the post will have to face a fresh selection. It is not clarified whether the three posts of Professor in Veterinary Bacteriology, Animal Nutrition and Animal Genetics in the pre-revised scale were already filled in and whether the holder of the posts got the revised scale without any fuss of fresh selection on the part of the respondents. The counter affidavit on behalf of respondents 1, 2, 3, 4, 5 and 11 is conspicuously silent on this point. However, it is contended that the qualification for post of Professor while sanctioning the revised scale was altered

inasmuch as when the post of professor carried the scale of Rs, 700-1250, the essential qualification required was only a post-graduate degree in the specific discipline whereas in the post created in the revised scale, a Doctorate degree in the subject along with the specialisation in the relevant discipline was prescribed and which fact can be gathered from the model qualifications prescribed for similar posts in all the research institutes of ICAR. It was further asserted that earlier the minimum experience required was about 5 years whereas it was revised to 7 years. Nothing would be more misleading than this eyewash performance which really hides the true intendment namely to exclude the present incumbents of the posts of Professor and to expose them to a competition with same rank outsiders who may as in the case of Dr. S. L. Shah score a march in the name of selection which generally leaves a gray area. Petitioners 2 and 3 do hold a Doctorate in their respective disciplines with experience extending more than 7 years in the discipline. Petitioner 1, who does not hold a Doctorate has to his credit M.R.C.V.S. which has been recognised by the Government of India as possessing post-graduate qualification in Veterinary and Animal Sciences and teaching posts including the post of Director of IVRI and continue to be recognised as guide/teacher for post-graduate degree courses. The subterfuge was to expose the petitioner to a fresh selection test with all its consequential uncertainties and that was the exact thing found by Dr. Gajendragadkar Committee. That is why it can be said that like the true Bourbons "ICAR has learnt nothing and forgotten nothing". The hard fact is that the petitioners were holding the posts of Professor then the revised scale became effective. In the letter dated January 20, 1971 sanctioning revised scale for the post of Professor, there is not even a whisper that the existing incumbent will be denied the benefit. In fact it is well-known that the University Grants Commission regularly recommends revised scales for every plan period for teaching posts and the revision takes note of inadequate scales sanctioned till the date of revision. The only justification offered by the respondents for denying the petitioners the benefit of the revised scale is to be found in the counter-affidavit of Dr. M. S. Swaminathan. It is contended that the newly created post in the cadre of Professor is not same as the newly created post in the cadre of Professor is not the same as the then existing post and that there was marginal revision in the qualifications for the posts of Professor in the revised scale and that petitioners were not discriminated because they were given an opportunity to contents for the posts in the revised scale. The justification is too flimsy to merit any serious consideration, more so in view of the fact that it is difficult to envisage a situation in such institutes, undertaking advance research in Agriculture and Animal Husbandry where persons holding Doctorate qualifications and enjoying the status of the post of Professor would be governed by two different scales even though the duties, responsibilities and functions in various sister disciplines are identical. In such a situation Article 39(d), must assist us in reaching a fair and just conclusion. Elaborating the underlying intendment of Article 39(d), Chinnappa Reddy, J. in *Randhir Singh v. Union of India* ((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : (1982) 1 LLJ 344) observed that construing Articles 14 and 16 in the light of the Preamble and Article 39(d), the Court was of the view that the principle 'equal pay for equal work' is deducible from those articles and may be properly applied to the cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. The case in hand is a glaring example of discriminatory treatment accorded to old, experienced and highly qualified hands with an evil eye and unequal hand and the guarantee of equality in all its pervasive character must enable this Court to remove discrimination and to restore fair play in action. No attempt was made to sustain the scales of pay for the post of Professor on the doctrine of classification because the classification of existing incumbents as being distinct and separate from newly recruited hand with flimsy change in essential qualification would be wholly irrational and arbitrary. The case of the petitioners for being put in the revised scale of Rs. 1100-1600 from the date on which newly created posts of Professors in sister disciplines in IVRI and

other institutes were created an filled-in in revised scale is unanswerable and must be conceded.

18. When the matter was discussed threadbare Mr. Abdul Khader, learned counsel for the Union of India stated that all the petitioners would be put in the revised scales from the time the post of Professor in upgraded scale was filled-in in sister disciplines. Mr. Khader state that petitioners 2 and 3 are already in the higher grade and any attempted fresh selection to fill-in those posts has been cancelled. He further stated that the first petitioner had to be unofficially put in the same scale on account of the failure of the first petitioner to exercise his option to be in the employment of the ICAR and that as by now he has exercised his option he will enjoy the same benefit. Thus Mr. Khader fairly conceded that all the petitioners will be put in the revised scale from the date fresh recruitment was made in sister disciplines in IVRI in the revised scale, and if the seniority was disturbed on account of the earlier approach, the same would be rectified.

19. If the petitioners are entitled to the revised scale as hereinabove indicated, and should be put in the same pursuant to the mandamus we propose to issue in this case, it is immaterial whether the advertisement which was issued is canceled or not. If the respondents still want to pursue the advertisement, they may do so without in any manner affecting the position of the petitioners and the petitioners need not expose themselves to the vagaries of a fresh selection. It is therefore, not necessary for us to cancel the advertisement for the reasons herein indicated. This would dispose of W.P. No. 587 of 1975.

20. Re : R.P. No. 4 of 1977 in S.L.P. No. 2339/75 : Dr. Y. P. Gupta filed Writ petition No. 276 of 1972 in the High Court of Delhi. In this writ petition, he primarily raised two contentions : (i) that the selection of respondent 6 for the post of Senior Biochemist was illegal as he did not possess essential qualifications, and (ii) the removal of the petitioner from the membership of the Post-graduate Faculty was unjust and invalid.

21. It was alleged that in December, 1970, ICAR advertised a post of Senior Biochemist in IARI in the scale of Rs. 1100-1400. The essential qualifications were set out in the advertisement as under :

- (i) Doctorate in Biochemistry or Organic Chemistry or Agricultural Chemistry.
- (ii) 10 years' research experience in the field of Nutrition with particular reference to quantity and quality of protein in food grains as evidenced by published work.
- (iii) Ability to plan, organise and guide research involving bio-chemical techniques as applied to protein chemistry and radio-tracer studies.

Amongst others, petitioners Dr. Y. P. Gupta, Dr. T. S. Raman and respondent 6 in the High Court Dr. S. L. Mehta applied for the post. A selection committee was set up with Dr. J. Gangly, Professor of Biochemistry as Chairman and Dr. P. K. Kymal and Dr. N. P. Datta as members. Intending candidates including petitioners Dr. Y. P. Gupta, Dr. T. S. Raman and respondent 6 Dr. S. L. Mehta were interviewed by the selection committee. The selection committee found that none of the candidates interviewed or considered in absentia fulfils all the essential qualifications laid down for the post and therefore, the committee was unable to recommend any name at that stage. The committee further recommended that the post may be re-advertised and essential qualification No. 2 should be amplified by adding the clause "10 years' research experience in the field of Protein Chemistry". The selection committee further recommended that from amongst the candidates interviewed and considered in absentia those who ssesames were set out in the report be called for

fresh interview which may be held after the post is advertised afresh with expanded essential qualification. This list includes the names of petitioners Dr. Y. P. Gupta and Dr. T. S. Raman as also respondent 6 Dr. S. L. Mehta. A fresh selection committee was set up which included respondent 5 Dr. M. S. Naik against whom numbers allegations of mala fides have been made. The new selection committee interviewed Dr. Y. P. Gupta along with others. Ultimately, the second selection committee recommended Dr. S. L. Mehta for the post which led to the filing of the petitioner inter alia on the ground that Dr. S. L. Mehta did not satisfy the minimum essential qualification.

22. Another grievance in the petition is that petitioner Dr. Y. P. Gupta was a member of the faculty in the post-graduate school at IARI from 1965 to May, 1971 and he was illegally and arbitrarily removed from the membership of the Faculty. In the communication dated June 15, 1971 by the Assistant Registrar to Dr. M. S. Naik, Head of the Biochemistry Department, Annexure P-1 to the petition in the High Court, it is stated that the letter of Dr. Y. P. Gupta dated May 30, 1970 was considered by the Academic Council which unanimously resolved that Dr. Gupta was not interested in continuing as a member of the Faculty and hence the Council "regret to utilise his service as a member of the Faculty to the post-graduate school any more". Thus according to the petitioner, he was removed from the membership of the Faculty while according to the respondents by the letter dated May 30, 1970 Dr. Gupta submitted his resignation which was accepted by the Academic Council with regret.

23. The High Court rejected the petition primarily on the ground that no writ petition lies against IARI, a ground no more available to the petitioner. On the merits, the High Court held that Dr. Y. P. Gupta has failed to substantiate the allegations of mala fides made against respondent 4, Dr. M. S. Swaminathan and respondent 5, Dr. M. S. Naik. The High Court further held that the selection committee had the power to relax the essential qualifications and the very fact that respondent 6, Dr. S. L. Mehta was appointed on the recommendation of the selection committee (showed) it must have been done by necessary implication after relaxing the essential qualification and therefore, the appointment of respondent 6, Dr. S. L. Mehta was valid and unquestionable. With respect to the second grievance, the High Court held that Dr. Y. P. Gupta ceased to be a member of the Faculty and that he was not removed from the membership and it was not necessary to hear him because it was not a case of removal but of cessation of membership and therefore no relief can be granted to Dr. Gupta.

24. Before we proceed to examine the contentions raised by Dr. Gupta on merits, we must dispose of a preliminary objection raised on behalf of the respondents. It was submitted that not only the writ petition filed by Dr. Gupta was dismissed by the High Court on merits but S.L.P. 2339/75 against the decision of the High Court was rejected by this Court on July 21, 1976 after recording the statement of Mr. Lokur, learned counsel who appeared for ICAR as also the Institute that the Academic Council would consider the question of taking back the petitioner as a member of the Faculty. Thereafter, Dr. Gupta filed R.P. No. 79/76 which was also rejected by this Court on October 27, 1976. At the relevant time as the successive review petitions were not barred, Dr. Gupta filed R.P. No. 4/77. This review petition was kept pending and was finally directed to be heard with the Writ Petition No. 587/75, by the order of this Court in C.M.P. No. 17350/79 dated December 19, 1979. Preliminary objection is that no case is made out by the petitioner for review of the decision of this Court rejecting petition for special leave filed by the petitioner. The writ petition filed by Dr. Gupta in the High Court on a reference made by a Division Bench was heard by a Bench of five Judges and the larger Bench focussed its attention on the main question whether the writ jurisdiction can be invoked against ICAR and its affiliates and it was held that the writ jurisdiction cannot be invoked. Once the High Court held that the writ jurisdiction cannot be invoked, it could not proceed

to examine the contentions raised by Dr. Gupta on merits. The moment the High Court held that it had no jurisdiction to entertain the writ petition, it became functus officio and therefore, its decision on the merits of the contention is of no consequence and at any rate could not conclude the matter against the petitioner. Now that it is held that the writ petition is maintainable on the finding that ICAR and its affiliates are other authority within the meaning of the expression in Article 12 of the Constitution, justice demands that the Court must examine the contentions of Dr. Gupta on merits. We accordingly overrule the preliminary objection raised on behalf of respondents and proceed to examine the contentions on merits by allowing the review petition No. 4 of 1977 and grant special leave to appeal to the petitioner.

25. Both the contentions may be separately examined.

26. The first contention is that respondent 6 Dr. S. L. Mehta who was selected by the selection committee for the post of Senior Biochemist after the bizarre exercise undertaken to find a suitable person to fill in the post on the earlier occasion, did not fulfil one of the essential qualifications for the post. It was urged that in order to help respondent 6 to get selected essential qualifications were doctored to suit his requirements and respondent 5 was nominated on the second selection committee. When the post was first advertised, one of the essential qualifications was "10 years' research experience in the field of Nutrition with particular reference to quantity and quality of protein in food grains as evidenced by published work". It is not in dispute that Dr. Gupta, the present petitioner, did satisfy this other essential qualification. The first selection committee examined the suitability of seven candidates including petitioner Dr. Gupta, Dr. T. S. Raman, petitioner in cognate petition and respondent 6 Dr. S. L. Mehta. The committee specifically recorded its finding that none of the candidates interviewed or considered in absentia including respondent 6, selected at a later stage, fulfil all the essential qualification laid down for the post. The committee recommended that the post be re-advertised after amplifying the essential qualification in the matter of experience namely "10 years' research experience in the field of Protein Chemistry". The post was the post of Senior Biochemist. Initially experience required was in the field of Nutrition with particular reference to quantity and quality of protein in food grains as evidenced by published work while the amplified essential qualification was research experience in the field of Protein Chemistry. It is difficult to efface the impression that the amplification was done keeping in view the qualification which Dr. S. L. Mehta had and even then the question did arise whether he satisfied the original or the amplified essential qualification. The committee recommended that pursuant to fresh advertisement, it would not be necessary for the petitioners Dr. Gupta, Dr. T. S. Raman and respondent 6 Dr. S. L. Mehta to submit a fresh application and they should be interviewed again with other candidates available on re-advertisement of post. The selection committee was reconstituted by nominating respondent 5 M. S. Naik, Head, Division of Biochemistry, IARI. All members of the first selection committee were available. No explanation is offered what necessitated expanding the committee by nominating respondent 5 on the selection committee. And let it be recalled that the relations between petitioner Dr. Gupta and respondent 5 were by that time considerably strained. It is therefore difficult to escape the conclusion that the purported amplification of essential qualification appears to be a device to exclude Dr. Gupta who fulfilled the first prescribed essential qualification and oblige respondent 6 to fit into altered qualification.

27. The errors are pointed out in connection with the proceedings of the second selection committee in which Dr. M. S. Naik participated, namely, that the proceedings were vitiated on account of the bias of Dr. M. S. Naik and that the committee failed to interview Dr. T. S. Raman and his case went by default not on account of his fault but on account of inefficiency and inaction on the part of the administration responsible for intimating to Dr. Raman the date of interview.

28. At the outset we must notice one development which renders a detailed examination of the contentions raised by Dr. Gupta unnecessary though we cannot refrain from expressing out distress about the recruitment method adopted by the ICAR and its affiliates. This exercise, we are undertaking to satisfy ourselves whether after the unraveling of despicable state of affairs in the internal administration of ICAR and its affiliates by Gajendragadkar Committee, has any improvement become noticeable ?

29. Dr. Gupta challenged the selection and appointment of respondent 6 as Senior Biochemist. The post of Senior Biochemist has since been abolished. Therefore, setting aside the selection of respondent 6 for the post of Senior Biochemist is only of academic interest. However one aspect which we cannot overlook is that by this process of selection seriously questioned in this petition, Dr. S. L. Mehta has scored a march over petitioner Dr. Gupta and his co-petitioner Dr. T. S. Raman in the matter of higher scale of pay.

30. The first question to which we must, therefore, address ourselves is whether there is any substance in the contention of Dr. Gupta that even applying the amplified essential qualification, respondent 6 Dr. S. L. Mehta was not qualified for being selected for the post ? The finding recorded by the High Court in this connection is eloquent to establish that Dr. S. L. Mehta did not fulfil either the original or the amplified essential qualification, pertaining to experience. Says the High Court that the research experience of respondent 6 Dr. S. L. Mehta started from October, 1962 when he was preparing research thesis for M.Sc. The selection took place in February, 1972 with the result that the research experience of Dr. Mehta fell short of 10 years. This finding was not only not controverted but is unassailable. And we do not subscribe to the view that the period spent in preparing thesis for M.Sc. - mark not Ph.D. - counts towards required experience. It is well-settled that experience to be of value of utility must be acquired after the educational qualification is obtained and to while acquiring the post-graduate qualification. In the case of Ph.D. Degree awarded on research the situation may be different. But preparing thesis after graduation for acquiring post-graduate degree would not count towards prescribed experience qualification. Respondent 6 qualified for M.Sc. in 1964 and Ph.D. towards the end of 1966 in Soil Science and Agricultural Chemistry under the guidance of Dr. N. B. Das and joined service at IARI in July, 1969. These facts are uncontroverted and therefore, the High Court overlooked the fact that respondent 6 Dr. S. L. Mehta had research experience extending only over hardly a period of 5 years. Further the High Court failed to notice that respondent 6 appeared not to carry on research in the line of Nutrition or Protein Chemistry and therefore he did not fulfil the qualification at all and in our opinion, he even could not have been called for interview by the selection committee. Not only that, in para 10 of the writ petition in the High Court, it was specifically asserted that respondent 6 Dr. Mehta did not satisfy the original or amplified essential qualification pertaining to experience because the post was under the project on the protein quality of millets, sorghum, wheat and other cereals concerned with studies on the nutritional quality of food grains whereas Dr. Mehta has never done any work nor published any literature in the line of nutrition nor was he ever basically trained in this line. In the counter-affidavit filed on behalf of respondents 2 and 4 that is Director-General and Secretary to the Government of India, ICAR and Director-General of ICAR, this averment was neither questioned nor controverted nor denied. Further the High Court upheld the selection and appointment of respondent 6 Dr. Mehta holding that as the selection committee had power to relax the essential qualification, the appointment of Dr. Mehta was made after relaxing the essential qualification. We find it difficult to appreciate that the High Court should uphold an appointment of a person, to suit whose requirement, the essential qualification was amplified by providing an irrelevant additional amplification and yet who failed to qualify for the same by resorting to the power of relaxation. And we are not satisfied that the second selection

committee had the power to relax essential qualification pertaining to experience. In this connection, it is advantageous to refer to the counter-affidavit of respondent 4, the Director-General of ICAR, wherein he stated that first essential qualification pertaining to educational attainment was relaxable. He is silent as to the second essential qualification pertaining to experience. The relevant portion may be extracted :

Doctorate in Biochemistry or Organic Chemistry or Agricultural Chemistry - relaxable to M.Sc. Degree or equivalent post-graduate qualifications in the case of candidates with exceptionally distinguished record of productive research.

It is not suggested that there was power of relaxation with regard to second essential qualification. However, neither respondent 6 nor respondents 2 and 4 ever asserted that but for power of relaxation claimed, respondent 6 could ever be said to have satisfied the essential qualification pertaining to experience. In this connection, we may refer to a counter-affidavit on behalf of respondents 3 and 5 to 7 which included respondent 6 the party concerned. In the counter-affidavit, there is a sphinx-like silence with regard to the averments made in para 10 that respondent 6 Dr. Mehta did not satisfy the essential qualification pertaining to experience. Sub silentio an admission can be spelt on behalf of respondent 6 that he did not have requisite essential qualification as to experience. Therefore, the conclusion is inescapable that respondent 6 Dr. Mehta did not satisfy the essential qualification pertaining to experience even after the ICAR and its affiliates and responding 4 amplified the essential qualifications. And we could not trace the source of power if any to relax essential qualification as to experience. Therefore, on the face of it the selection of respondent 6 for the post of Senior Biochemist is utterly unsustainable. More so because there were others who fulfilled all essential qualifications and one is left to speculate the reasons which weighed with the selection committee to reject them and to select a person who did not fulfil the essential qualification for such a post as Senior Biochemist, claiming non-existent power to relax the qualification.

31. In this context one more submission may be disposed of. It was said that the committee consisted of experts and they were highly qualified persons who would be able to evaluate and assess the relative merits of each of the candidates before it and the Court is least competent to do so and therefore it would be unwise to substitute experts' decision by Court's decision. In this connection, reliance was placed on *Dr. M. C. Gupta v. Dr. Arun Kumar Gupta* ((1979) 2 SCC 339 : 1979 SCC (L&S) 168 : 1979 Lab IC 296) in which this Court held as under : (SCC p. 344, para 7)

When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching /research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally can be. Undoubtedly, even such a body if it were to contravene rules and regulation binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226

It was urged that once it is conceded that as the power of selection and appointment vests in the ICAR, the Court should not usurp that power merely because it would have chosen a different person as better qualified (see *State of Bihar v. Dr. Asis Kumar Mukherjee* ((1975) 2 SCR 894 : (1975) 3 SCC 602 : 1975 SCC (L&S) 51 : (1975) 1 LLJ 198)). Undoubtedly, the Court must look

with respect upon the performance of duties by experts in the respective fields as has been said in Dr. M. C. Gupta case ((1979) 2 SCC 339 : 1979 SCC (L&S) 168 : 1979 Lab IC 296). However, the task of ushering a society based on rule of law is entrusted to this Court and it cannot abdicate its functions. Once it is most satisfactorily established that the selection committee did not have the power to relax essential qualification pertaining to experience, the entire process of selection of respondent 6 was in contravention of the established norms prescribed by advertisement and power of the selection committee and procedure of fair and just selection and equality in the matter of public employment and to rectify resultant injustice and establish constitutional value this Court must interfere. Selection of respondent 6 is contrary to rules and orders and in violation of prescribed norms of qualification. He was ineligible for the post when selected. His selection and appointment would be required to be quashed and set aside.

32. The present position however is that the post of Senior Biochemist has been abolished. Undoubtedly, respondent 6 by undeserved benefit of improper selection has scored a march over his colleagues in the matter of pay-scales to which he would not be entitled. Petitioner Dr. Gupta was put in the scale of Rs. 1100-1600 in 1978 while respondent 6 Dr. Mehta was put in that scale in 1980 that is two years after the petitioner. By the illegal selection respondent 6 has reached the scale of Rs. 1800-2250 while Dr. Gupta is in the scale of Rs. 1500-2000. Respondent 6 Dr. Mehta is enjoying this utterly undeserved benefit consequent upon his unsustainable selection as Senior Biochemist.

33. Now that the post of Senior Biochemist is abolished, how do we redress the wrong ? At the hearing of this petition, it was suggested to the respondents to put both Dr. Gupta and Dr. Raman whose case will be presently examined in the scale of Rs. 1800-2250 from the date respondent 6 Dr. Mehta has been elevated to that scale. That is the only way for securing justice to Dr. Gupta and he is entitled to it.

34. The second grievance of Dr. Gupta is that he was illegally removed from the membership of the Post-graduate Faculty by the Academic Council. Few relevant facts in this connection are that Dr. Gupta felt that he was unjustly treated by his superiors by not allocating students for Ph.D. to him and by not facilitating post-graduate teaching. There is a long drawn-out correspondence in this behalf which we consider unnecessary to refer to save and except the letter dated May 30, 1970 which has been treated by the Academic Council as a letter of resignation of Dr. Gupta from the membership of the Faculty. By this letter petitioner Dr. Gupta informed the Academic Council that even though he has been repeatedly assured that his grievance would be thoroughly examined and full justice would be done to him for the discrimination and victimisation to which he has been subjected in the matter of allotment of students of 1968 and 1969 batches, nothing has been done in this behalf. He further states that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him. He then states as under :

As such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimisation shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates.

This letter was placed before the meeting of the Academic Council convened on May 3, 1971 chaired by respondent 4. Letter dated May 30, 1970 of the petitioner was placed on the agenda at Item No. 17. In this connection, the Academic Council resolved as under :

Your letter was considered by the Council at its meeting held on May 3, 1971 when the Council came to the unanimous conclusion that you were not interested in continuing as Faculty Member and hence the Council regrets to utilize your services as a Faculty Member of the P.G. School any more.

The callous and heartless attitude of the Academic Council is shocking. It adds insult to injury. Dr. Gupta has been the victim of the unfair treatment because he raised a voice of dissent against certain claims made by the high-up in ICAR in the field of Research. Avoiding going into the details of it, this resulted in Dr. Gupta being denied the allocation of students. He did not act in a precipitate manner. He went on writing letter after letter even including to respondent 4 beseeching him to look into the matter and to render justice to him. When everything fell on deaf ears, out of exasperation he wrote letter dated May 30, 1970 in which he stated that the only honourable course left open to him was to resign rather than suffer. The Council seized upon this opportunity to get rid of Dr. Gupta. In this connection, it is worthwhile to point out paragraph 11.1 in Chapter XI of the Gajendragadkar Committee's report wherein the major complaints regarding working conditions in the Divisions were listed as under :

- (i) The Head of the Division does not give facilities for work. He favours those who work for him.
- (ii) There is no academic atmosphere as there is no free discussion on research projects and results obtained.
- (iii) Senior scientists insert their names in research papers even though they do not do the actual work.
- (iv) Purchase of chemicals, glassware etc. take inordinate delay.
- (v) Scientists are not allowed to use certain equipments which are available in the Division or in the Institute. For example, the equipments available in the Division of Biochemistry of IARI are not shared by all the colleagues of the Division. The Nuclear Research Laboratory has several equipments which scientists of other Divisions normally cannot use.

After listing these complaints, the Committee gave its considered opinion as under :

11.2. We feel that most of these complaints are genuine and they should be remedied. The working conditions for scientists should be made attractive so that a scientist would be encouraged to engage himself in research rather than engage himself in unacademic activities. So the conditions in a Division should be set right first.

The Committee proceeded to make numerous recommendations to ameliorate the situation. In this context we would also like to refer to paragraph 13 page 152 of the Report which reads as under :

As more instances of allegations of unscientific attitudes, behavior and practices in IARI, we cite the following. These come from the submissions made by three scientists of the Biochemistry Division of IARI, Dr. T. S. Raman challenges the findings in the Ph.D. thesis of Dr. L. S. Mehta, a Biochemist in the Nuclear Research Laboratory. Dr. Raman categorically asserts that certain data contained in Dr. Mehta's thesis "could not have been obtained by methods he has claimed to have used". Dr. Y.

P. Gupta who apparently has himself worked on the lysine content of different varieties of wheat, states that in the half-yearly report for period ending October, 1968, he had reported the lysine content of Sonora-64 to be 3.26 per cent but that the Head of the Division deliberately changed it to 2.26 per cent so that the Sharabati Sonora might appear in a more favourable light. He seriously disputes the data on the protein and lysine content of Sharabati Sonora published by Dr. Swaminathan in the November, 1967 issue of the journal "Food Industries". Dr. K. G. Sikka states that four varieties of Arhar (cajanus) have been recently released which he finds contain certain toxic substance causing blindness among rats. Within the short time available to us, it has not been possible for us to examine these all__egations. We do not also think that it would be fruitful course for us to pursue. It is obvious that these are very serious allegations. Whether they are substantiated a careful examination, the fact remains that there are many junior scientists in IARI who, rightly or wrongly, feel that they are not free to publish a scientific finding because it does not suit somebody higher up or that in fact unscientific data are being passed on to the higher authorities in return of favours and promotions. The existence of this feeling is most regrettable because it creates the conditions for breeding of unscientific behaviour and practices if they do not already exist. Mere refutation of the allegations will not therefore do. Dr. Gupta's complaint was then noted and that is the complaint which awaits redressal. It clearly transpires that Dr. Gupta was hounded out of the Faculty membership and now the respondents try to hide this inconvenient fact by treating the cry of agony in the letter dated May 30 1970 as letter of resignation. Apart from being harsh, it is an unethical attitude on the part of the ICAR. However, at this stage, we would record a statement made by Mr. Lokur, learned counsel appearing for ICAR and its affiliates before this Court on July 21, 1976 at the hearing of S.L.P. No. 2339/75 preferred by petitioner Dr. Gupta which reads as under :

Mr. Lokur states that the respondent council would consider the question of taking back the petitioner as a member of the Faculty.

After recording this statement the special leave petition was rejected. It was hoped that the respondents would act to honour the statement of their learned counsel. Now that the matter is being disposed of we direct the council to carry out its statement made before this Court within three months from the date from today.

35. Re : R.P. No. 80/76 in S.L.P. 702/76 : Dr. T. S. Raman filed the writ petition in the Delhi High Court challenging the selection and appointment of respondent 6 as Senior Biochemist on all the grounds which were urged by Dr. Y. P. Gupta in his writ petition. There is also an additional point in his favour in that even though the first selection committee constituted to select a Senior Biochemist had directed that the second selection committee should interview Dr. T. S. Raman along with other candidates, no intimation was sent to him about the date and time of the interview and he did not have the benefit of the interview by the second selection committee which recommended respondent 6 Dr. Mehta for the post of Senior Biochemist. Dr. T. S. Raman questioned the correctness and validity of the selection of Dr. S. L. Mehta respondent 6 in Special Leave Petition 702-76 which was heard and disposed of along with the writ petition of Dr. Gupta and met with the same fate. Dr. Raman preferred S.L.P. No. 702/76 which was dismissed by this Court on August 30, 1976. Thereafter, he filed Review Petition No. 80/76 which was directed to be heard in this group of petitions. The reasons which found favour with us for reviewing the decision of this Court dismissing the S.L.P. No. 2339/75 preferred by Dr. Gupta and admitting it and disposing it on merits

would mutatis mutandis apply to the review petition of Dr. T. S. Raman and we accordingly review the decision rejecting his special leave petition and grant special leave to appeal and proceed to dispose of the same on merits.

36. Ordinarily Dr. Raman should get the same relief which Dr. Gupta is held entitled to, but certain facts were brought to our notice which necessitate a consideration of Dr. Raman's case slightly differently. Before we proceed to examine Dr. Raman's case, it may be noted that the High Court found fault with Dr. Raman in not informing the concerned authority about the change in his address and therefore, if Dr. Raman did not receive the intimation for interview, he should thank himself. This approach does not commend to us. Dr. Raman was still in the employment of the Institute at the time when the second selection committee decided to interview candidates and in view of the findings of the first selection committee, Dr. Raman was entitled as a matter of right to be called for interview. The High Court observed that Dr. Raman neither applied for the post nor appeared for the interview before the second selection committee. This begging the issue because the High Court wholly overlooked the proceeding of the first selection committee in which it was decided that without any fresh application from Dr. Raman, he would be considered to be a candidate before the second selection committee and would be called for interview. There is a further confession in the observation of the High Court when it states that Dr. Gupta and Dr. Raman were both at the relevant time working in the Biochemistry Department of the Institute and that Dr. Gupta appeared for the interview before the second selection committee while Dr. Raman failed to do so and he cannot make a grievance about his own lapse. If Dr. Raman was at the relevant time attached to the Institute and was working with the Institute, we see no justification for the ministerial side of the Institute not informing Dr. Raman to appear to interview. The lapse was on the part of the selection committee and the same cannot be wished away. The High Court was clearly in error in observing that either Dr. Raman was not hopeful of getting the job or he had some other reasons for not applying of the same and therefore his grievance cannot be entertained. This is clearly contrary to record. He had applied earlier and was entitled to be called for interview as noted in the proceedings. It was obligatory upon the second selection committee to inform Dr. Raman to appear for the interview and adequate steps should have been taken to give the intimation because he was attached to the Institute and was in active service of the Institute and intimation to him would not require any Herculean effort on the part of the committee. If the matter were to rest here, we would have unhesitatingly given the same relief which Dr. Gupta is held entitled to, but certain additional facts were put on record which necessitate a different approach.

37. It may be recalled that since the revision of the scale attached to the post of Professor to Rs. 1100-1600, further promotion was to the scale of Rs. 1500-2000 and the next promotional stage was Rs. 1800-2250. It now transpires that Dr. Raman was made a member of Agricultural Research Service (ARS) with effect from October 2, 1975 and he was put in the scale S-2 Rs. 1100-1600 from the same date. Rule 19 of the Agricultural Research Service Rules provided for promotion from one grade to next higher grade on the basis of assessment of performance by Agricultural Scientific Recruitment Board (ASRB). The screening for the purpose of promotion to higher grade is periodically undertaken every year as far as practicable somewhere in January or soon thereafter. Such a screening was undertaken on October 26, 1977 by the assessment committee appointed by the Chairman of ASRB. The period under assessment was up to and inclusive of December 31, 1975. Unfortunately, Dr. Raman was not recommended by the committee for promotion to S-3 grade i.e. Rs. 1500-2000, but instead of promotion to the higher grade, the committee recommended that two advance increments be granted to Dr. Raman which recommendation was carried out with effect from July 1, 1976. Against the assessment by the assessment committee, Dr. Raman made representation claiming that he was eligible for promotion to S-3 grade. This representation was

rejected by the Director-General concurring with the assessment made by the assessment committee which did not find Dr. Raman fit for promotion to S-3 grade. In 1978 Dr. Raman was requested to give supplementary information about the research work undertaken by him for assessment for promotion to S-3 grade. In the meeting of the assessment committee held on May 28, 1980, the information supplied by Dr. Raman was held to be insufficient and this can be culled out from the observation of the committee that Dr. Raman "could not be assessed for want of material and CC Rs. for all the years". The case of Dr. Raman for promotion to S-3 grade again came up before the assessment committee which met on April 22, 1982 and the committee noted its decision conveyed by the words 'no change'. Now these assessments are not questioned in the writ petition filed by Dr. Raman and these are later developments and therefore, it would be difficult to give Dr. Raman any benefit at this stage wholly ignoring the later developments.

38. The learned counsel for the ICAR after succinctly pointing out the facts hereinbefore mentioned, submitted that it is not possible to accord same treatment to Dr. Raman on par with Dr. Gupta wholly ignoring later developments. He however frankly and fairly stated that if the Court directs, the Institute has no objection to appointing a fresh committee for making a fresh assessment for ascertaining the suitability of Dr. Raman for promotion to S-3 grade not on the basis of the material regarding work done and achievements made by him for the period commencing from December 31, 1976 up to the period he has been assessed or upto now. It was further submitted that if the special assessment committee which may be set up to examine the case of Dr. Raman recommends his promotion to S-3 grade, the same can be given to him with effect from first of July of the year following the year upto which he submits his work done and other achievements. Dr. Raman is in the grade of Rs. 1100-1600 since 1975. A period of 8 years has rolled by. He is undoubtedly a highly qualified person. It is equally true that he has been assessed thrice and found wanting for promotion to the higher grade. However, we appreciate the fair attitude adopted by the learned counsel in this behalf and accordingly direct that the Institute shall set up a special assessment committee to assess the suitability of Dr. Raman for promotion to S-3 grade by examining his work for 1976 till today. This may be done within a period of three months from today.

39. Except for what we have recommended in the foregoing paragraph, it is not possible to give Dr. Raman any other relief to which Dr. Raman would have been held entitled on the ground that it was an error of the second selection committee not to have interviewed him or not to have considered his case in absentia as directed by the first selection committee. Though the lapse was on the part of the respondents, the resultant situation has become irremediable and irreversible. Therefore, with the observations and directions made in the foregoing paragraph, the appeal arising from the special leave petition of Dr. Raman fails and is dismissed.

40. Re : C.A. No. 1043/81 : Appellant Om Prakash Khaudhuri after obtaining post-graduate degree in the discipline 'Operational Research' in 1973-74 joined the post of Senior Computer in Indian Agricultural Statistics Institute, an affiliate of ICAR on December 4, 1975. The Agricultural Scientists Recruitment Board ('ASRB' for short) has been constituted by the ICAR with the approval of the Government of India as a recruiting agency for the various posts in Agricultural Research Service ('ARS' for short). ASRB issued an advertisement intimating that it would hold competitive public examination in 1978 to recruit scientists to be appointed under various disciplines of 'ARS'. For the information of the intending candidates, ASRB made available the rules framed by the ICAR on August 19, 1977 ('1977 Rules' for short) setting out the terms and conditions for admission to the competitive examination and the criteria for selection of successful candidates etc. The competitive examination was to consist of written test having 600 marks followed by a viva voce test carrying 100 marks. The final selection was to be done according to the merit list, which would

be arranged by the ASRB in the order of merit in each category as disclosed by the aggregate marks finally awarded to each candidate as per Rule 14 of 1977 Rules. In response to the advertisement, petitioner applied on October 26, 1977 for being admitted to the examination and his application was accepted and petitioner appeared in the written test. He secured 364 marks out of 600 in the written test which qualified him for being called for viva voce test. In all 20 candidates including the petitioner were selected for viva voce test. After the viva voce test, the ASRB declared the names of 13 candidates as successful and finally selected them for ARS in the discipline 'Agricultural Statistics'. The petitioner was not among the successful candidates. In fact, nearly 21 vacancies were left unfilled by the ASRB. Petitioner contends that ASRB contravened Rules 13 and 14 by prescribing minimum marks for qualifying at viva voce test at 40 out of 100 and those who did not secure 40 marks, even if on aggregate of the marks were eligible for being included in the merit list, such candidates were wrongly excluded from the merit list. Petitioner further contends that the merit list prepared in contravention of Rules 13 and 14 and the resultant selection based on such illegal and invalid merit list is liable to be quashed and a mandamus be issued directing the respondents to prepare a fresh merit list in accordance with Rules 13 and 14. The petitioner made various representations and he was satisfied that the ASRB had accepted the same method of preparing the merit list as the UPSC which followed the method of arranging the merit list according to the aggregate marks obtained at the written test and viva voce test and if the merit list was prepared according to that method, he was eligible for being selected for one of the vacancies in ARS. Petitioner continued his search for justice and ultimately he filed Writ Petition No. 553/80 in the High Court of Delhi for the abovementioned reliefs. A Division Bench of the High Court held that the law as it then stood was clear that a society registered under the Societies Registration Act was not other authority within meaning of the expression under Article 12 and that as ICAR is a society, writ jurisdiction cannot be invoked against it and on this short ground writ petition filed by the petitioner was rejected in limine. Hence this appeal by special leave.

41. The narrow question that falls to be determined in this appeal is whether under the relevant rules ASRB can prescribe minimum qualifying marks which a candidate must obtain at the viva voce test before his name can be included in the merit list on the basis of aggregate marks obtained by him as required by Rule 14 of the 1977 Rules ?

42. ASRB has been set up as a separate and independent agency for recruiting personnel for IASRI, an affiliate of ICAR. A competitive examination was held in 1978 to recruit scientists to be appointed under various disciplines of ARS including the discipline 'Agriculture Scientists'. There were 34 vacancies in this discipline. Selection was to be made by competitive examination comprising written test carrying 600 marks in the aggregate and viva voce test carrying 100 marks. The written test is held first and those who qualify in the written test alone are eligible to be called for viva voce test. It is alleged and not controverted that ASRB prescribed that anyone to be eligible for being admitted in the merit list on the basis of aggregate marks should also have the additional qualification of at least obtaining 40 marks in the viva voce test. It is seriously contended that this additional qualification does not have the authority of law, and that it was arbitrarily devised without any rationale behind it.

43. The relevant rules are Rules 13 and 14 of the 1977 Rules, which may be extracted :

13. Candidates who obtain such minimum marks in the written examination as may be fixed by the Board in their discretion shall be summoned by them for viva voce.

14. After the examination, the candidates will be arranged by the Board in the order

of merit in each category (professional subjectwise) as disclosed by the aggregate marks finally awarded to such candidates and such candidates as are found by the Board to be qualified by the examination shall be recommended for appointment upto the number of unreserved vacancies decided to be filled on the result of the examination.

44. Mr. Ramachandran, learned counsel for the petitioner contended that Rule 13 does not envisage obtaining of minimum marks at the viva voce test even though it contemplates obtaining minimum marks at the written test so as to be eligible for being called for viva voce test. It was further urged that Rule 14 specified the manner in which merit list is to be arranged. Rule 14 provides that after both written and viva voce tests are held, the candidates will be arranged by the Board in the order of merit in each category (professional subjectwise) as disclosed by the aggregate marks finally awarded to each candidate and such candidates as are found by the Board to be qualified by the examination shall be recommended for appointment upto the number of unreserved vacancies decided to be filled on the result of the examination. On a combined reading of Rules 13 and 14, two things emerge. It is open to the Board to prescribe minimum marks which the candidates must obtain at the written test before becoming eligible for viva voce test. After the candidate obtains minimum marks or more at the written test and he becomes eligible for being called for viva voce test, he has to appear at the viva voce test. Neither Rule 13 nor Rule 14 nor any other rule enables the ASRB to prescribe minimum qualifying marks to be obtained by the candidate at the viva voce test. On the contrary, the language of Rule 14 clearly negatives any such power in the ASRB when it provides that after the written test if the candidate has obtained minimum marks, he is eligible for being called for viva voce test and final merit list would be drawn up according to the aggregate of marks obtained by the candidate in written test plus viva voce examination. The additional qualification which ASRB prescribed to itself namely, that the candidate must have a further qualification of obtaining minimum marks in the viva voce test does not find place in Rules 13 and 14, it amounts virtually to a modification of the rules. By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. It however does not appear in the facts of the case before us that because of an allocation of 100 marks for viva voce test, the result has been unduly affected. We say so for want of adequate material on the record. In this background we are not inclined to hold that 100 marks for viva voce test was unduly high compared to 600 marks allocated for the written test. But the ASRB in prescribing minimum 40 marks for being qualified for viva voce test contravened Rule 14 inasmuch as there was no such power in the ASRB to prescribe this additional qualification, and this prescription of an impermissible additional qualification has a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidate at written test plus viva voce test. Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtained minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by the ASRB on the ground that he has not obtained qualifying marks at viva voce test. This was impermissible and contrary to rules and the merit list prepared in contravention of rules cannot be sustained.

45. It may at this stage be pointed out that the Union Public Service Commission has framed its rules relating to competitive examination held by it in 1978 to recruit personnel to Indian Economic

Service and the Indian Statistical Service. Rules 12 and 13 are relevant for this purpose. Briefly, it may be stated that Rule 12 authorises the Commission to prescribe minimum qualifying marks for the written examination to be fixed by the Commission at its discretion. It further appears that those who obtain the minimum qualifying marks will be eligible for being called for viva voce test. Rule 13 provides that after the examination i.e. both the written test and the viva voce test, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate and in that order so many candidates as are found by the Commission to be qualified by the examination shall be recommended for appointment upto the number of unreserved vacancies decided to be filled on the result of the examination. There is a proviso to this rule which is immaterial. It appears that when the petitioner drew attention of the ICAR that in prescribing the additional qualification of minimum marks to be obtained by the candidates at the viva voce test and not preparing the merit list according to the aggregate of marks by excluding those candidates who had not obtained minimum qualifying marks at the viva voce test, it contravened Rules 13 and 14 and more particularly Rule 14, the ICAR referred the matter to UPSC and enquired about the procedure followed by it. There is an admission in the counter-affidavit of Mrs. Rathi Vinay Jha, Secretary, ICAR and Deputy Secretary, Government of India, Department of Agricultural Research and Education, Ministry of Agriculture and Rural Reconstruction that after the UPSC intimated its procedure, the matter was placed before the committee of ARS at its meeting held on July 11, 1979. Subsequently, the President, ICAR approved the procedure followed by the UPSC and recommended by the committee of ARS, and the revised procedure was adopted for the examination held in January, 1981. The revised procedure eliminates obtaining of minimum qualifying marks at viva voce test. May be that the ICAR has corrected itself but what about the damage done to the petitioner and those similarly situated.

46. It is not possible at this late stage to reject the entire selection on the ground that the ASRB committed a serious legal error in prescribing minimum qualifying marks at the viva voce test and drawing up merit list on this impermissible method. It would be equally improper to disturb the selection of those who had been selected and appointed way back in 1978. Even though it is true that a serious legal error has been committed in drawing up the merit list, at this late stage, it would be unwise to reject the entire selection, disturbing those who are already selected and may have put in service of not less than 5 years. But it is crystal clear that 21 vacancies were kept unfilled. It is not made clear whether the petitioner has been selected at any later selection. If he is selected at the later selection, nothing further is required to be done. But if he is not selected, the ASRB may draw the merit list in respect of remaining 21 unfilled vacancies from amongst those who were called for viva voce test and who were not selected because some of them like petitioner did not obtain minimum qualifying marks at viva voce test. The merit list may be drawn in respect of those who though called for viva voce did not qualify for being put in the merit list. Ignoring the concept of minimum qualifying marks a merit list in respect of them be drawn up on the basis of aggregate marks. If there is a vacancy, and if the petitioner comes within the zone of selection on the aggregate of marks obtained by him, his case shall be considered for appointment prospectively, and not retrospectively. This is the only relief which we are inclined to grant to the petitioner.

47. That is end of the journey. It is better to draw up here the directions in respect of each of the petitioners.

48. In Writ Petition No. 587/75, the ICAR is directed on their concession and by a mandamus of this Court to put the three petitioner in the revised scale of Rs. 1100-1600 sanctioned for the post of Professor effective from the day when others selected as Professors in sister disciplines were awarded the revised scale of Rs. 1100-1600.

49. In Special Leave Petition No. 2339/75, the ICAR is directed by a mandamus of this Court to award to Dr. Y. P. Gupta the scale of Rs. 1800-2250 from the date the same was given to respondent 6 Dr. S. L. Mehta. The arrears payable pursuant to the direction shall be paid within 3 months from today.

50. Further the ICAR is directed to carry out the statement made by its learned counsel Mr. Lokur of taking back Dr. Y. P. Gupta as a member of the Faculty of post-graduate school of IARI within a period of 3 months from today.

51. In S.L.P. No. 702/76, it is directed on the concession of the learned counsel for the ICAR that a special assessment committee may be set up to examine the case of Dr. T. S. Raman for promotion to S-3 grade within a period of 3 months. Dr. T. S. Raman is not entitled to any further relief in his special leave petition.

52. In C.A. 1043/81, the ICAR and ASRB are directed to prepare the merit list in respect of those candidates who were called for viva voce test, but were not included in the merit list on the aggregate of marks obtained by them as directed herein and if there is a vacancy and the appellant/petitioner comes within the zone of selection he shall be appointed to one such vacancy. The appointment would be prospective and would be effective from the date of the appointment but this is subject to the condition that if the appellant/petitioner is already selected at a later selection, nothing more is required to be done.

53. We order accordingly. The respondent shall pay the costs of the petitioner in each petition.

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