

In Re Reference Under Article 317 (1) of The Constitution of India.

Special Reference No. 1 of 1983

(L. M. Sharma, P. B. Sawant JJ)

03.08.1990

JUDGMENT

L. M. SHARMA, J. -

1. This is a reference under Article 317 (1) of the Constitution made by the President of India to this Court for inquiry and report on the complaint of Smt. Santosh Chowdhary, Chairman of the Punjab Public Service Commission alleging misbehaviour on the part of Sri Gopal Krishna Saini, a Member of the Commission.

2. According to the case of Smt. Chowdhary, number of candidates for certain appointments were interviewed at Patiala on November 24, 1982 till about 1.15 p.m. Thereafter Smt. Chowdhary along with Sri Saini and the other three Members of the Commission left the committee room and proceeded towards the complainant's office when a very unpleasant incident took place. Sri Saini had been absent on the previous two days and Smt. Chowdhary, the Chairman, enquired from him the reason. She also asked him to inform her in advance whenever in the future he had to remain absent. According to her further case, Sri Saini did not take the advice in the right spirit and suggested that the Chairman may put the same in writing on which she wanted a clarification as to the matter she was being asked to put in writing. She alleges that thereupon Sri Saini, without any provocation or any further conversation gave a full blooded hard slap across her face which not only stunned her but left her in great physical shock and pain. Other Members of the Commission who were just behind her were also shocked by this conduct. One of the Members led her to her office and the other two Members also later followed but Sri Saini disappeared from the scene. It is said that she sent her complaint in the form of a confidential letter addressed to Dr. M. Chenna Reddy, the then Governor of Punjab, with a copy to Sri Darbara Singh, the then Chief Minister of Punjab.

3. Before proceeding further with the other details leading to the present Reference it may be stated that Smt. Chowdhary was appointed a Member of the Punjab Public Service Commission in February 1975 and as the Chairman on May 28, 1980, Sri Saini was appointed a Member on May 30, 1980. After the General Elections in Punjab Sri Darbara Singh became the Chief Minister of the State in early June 1980.

4. The Governor was not available in Punjab and, therefore, it is said that the complaint was forwarded to the Government of India by the Chief Minister on November 25, 1982. The alleged incident did not get any publicity for some time and a news item appeared in one of the daily papers for the first time on December 11, 1982. Sri Saini thereafter received a charge-sheet dated December 15, 1982 from the Chief Secretary asking for his reply. Besides taking several technical objection, Sri Saini denied the story of Smt. Chowdhary. The other three Members of the Commission, namely, Sri H. S. Deol, Sri M. S. Brar and Sri W. G. Lall, generally supported the complainant's allegation. The Present reference was made by the President of India after considering the reply of Sri Saini and the statements of Sri Deol, Sri Brar and Sri Lall.

5. After the receipt of the Reference, this Court directed notice to be served on all the five Members of the Commission and they filed their sworn statements. Affidavits were also filed by several other persons who claimed to have knowledge of the incident or of its alleged background. The Attorney General for India and the Advocate General of Punjab also appeared to assist the court. It was contended on behalf of Sri Saini that since the alleged incident, if assumed to be true, may lead to his indictment of having committed a criminal act or in any event an act which may expose him to civil action, the reference should not have been made by the President without fully satisfying himself (by getting the matter investigated) that a prima facie case was made out. It was argued that this Court should not make an inquiry into allegations involving disputed facts as that may prejudice a future action in the ordinary civil or criminal court. After considering the questions raised by Sri Saini at some length, this Court by its judgment dated August 17, 1983 overruled the objections and directed the District and Sessions Judge, Delhi to nominate an Additional District and Sessions Judge for the purpose of recording evidence and transmitting the same to this Court. Accordingly, evidence which was led before the Additional District and A Sessions Judge has been forwarded to this Court. The case, however, was not promptly listed for final disposal under the wrong impression that it could be disposed of only by a Constitution. Bench which was not available on account of more urgent case.

6. Before the Additional District Judge a large number of witnesses were examined at considerable length. A number of documents and affidavits also from part of the records. There does not appear to be any dispute that some incident did take place on November 24, 1982 soon after 1.00 p.m. in the Public Service Commission building at Patiala. Sri Saini was absent earlier which led to some discussion between the complainant Chairman and the respondent Sri Saini. The parties however differ as to what actually happened at that state. According to the case of the complainant, she has reiterated her earlier version as disclosed in the complaint. Mr. R. N. Mittal, the learned counsel appearing for Sri Saini, has however attempted to suggest that her evidence and the evidence of other witnesses relied upon by her are not fully consistent and that their case has been developing from stage to stage indicating its unreliable nature. A similar comment is made on behalf of the complainant on the evidence led by Sri Saini. We will have to deal with the evidence at some length.

7. Sri R. N. Mittal also contended that several important documents were not filed in the proceeding by State of Punjab and the Public Service Commission in spite of repeated requests which has prejudiced Sri Saini. An application was moved before this Court for a direction to produce a number of documents which was registered as C. M.P. No. 37191 of 1983 and was disposed of by the order dated December 9, 1983 (at pages 1023-1024 of Vol. VI of the paper book). While dealing with some of the documents it was observed that the petitioner (Sri Saini) would be at liberty to contend during the hearing of the Reference case that he has been prejudiced in his defence by reason of the fact that he was not allowed to inspect them and if this Court accepts that contention it may become necessary to allow the petitioner to inspect those documents and to recall certain witnesses for further examination. When the case was taken up before us, Sri Mittal reiterated the stand of Sri Saini and explained the nature of the documents sought to be produced for inspection. We examined the matter closely at considerable length and we do not agree with Sri R. N. Mittal that the petitioner (Sri Saini) was entitled to inspect the documents referred to above and the refusal in this regard has prejudiced him.

8. Sri R. N. Mittal next contended that the reference must be treated to have become infructuous and need not be answered. As provided in Article 316(2), the tenure of office of a Member of a Public Service Commission is six years (subject to reduction of the period in case of the Member reaching

the age of superannuation earlier, which is not the case here). The term of office of Sri Saini was to expire in May 1986. The contention of Sri Mittal is that since his tenure expired in 1986, Sri Saini cannot now be removed from his office and it is, therefore, futile to examine the evidence recorded in the case in pursuance of the earlier order of this Court, and to record a finding on the correctness or otherwise of the allegations made against him. Referring to the provisions of Article 316, dealing with appointment and term of office of Members, the learned counsel emphasised the fact that the period of six years has been rigidly fixed making it clear that the period cannot be extended and the Member on the expiration of his term would be ineligible for reappointment. Reliance was placed on several decisions dealing with disciplinary proceedings against the government servants, and it was argued that the same principle should be applicable to Member of the Public Service Commissions. Reference was made to the decisions in *R. T. Rangachari v. Secretary of State* (AIR 1937 PC 27 : (1973) 1 MLJ 515 : 64 IA 40), *State of Assam v. Padma Ram Borah* (AIR 1965 SC 473 : ILR (1963) 15 Ass 97), *Dinesh Chandra Sangma v. State of Assam* ((1977) 4 SCC 441 : 1978 SCC (L&S) 7 : (1978) 1 SCR 607), *B. J. Shelat v. State of Gujarat* ((1978) 2 SCC 202 : 1978 SCC (L&S) 208 : (1978) 3 SCR 553) and *C. L. Verma v. State of Madhya Pradesh* ((1989) Supp 2 SCC 437 : JT (1989) 4 SC 182). An examination of these decisions would show that the case depended on the interpretation and effect of the relevant service rules dealing with the conditions of service including provisions in regard to retirement and compulsory retirement. So far the present case is concerned, the conduct of Member of the Public Service Commission is in question which has been considered important enough to be directly dealt with by the Constitution itself. The efficiency and purity of administration are greatly dependent on the right choice of the candidates to be entrusted with official duty, and to ensure that suitable persons, in whom the public may have full faith are selected, it was considered necessary to have a body with members of integrity, sincerity, and practical wisdom capable of commanding the confidence of the people for examining the merits of the candidates and make available to the appointing authorities their conclusion. Taking into account the possibility of their being subject to pressure, they were given special protection by the Constitution under Article 317 providing that they - except in case covered by clause (3) - can be removed from their office only by an order of the President on the ground of misbehaviour after an enquiry by the Supreme Court in this regard. The fact that the apex court of the country was entrusted with such a duty indicates the great importance which has been attached to the office of the Member of the Commission. Under clause (2) of Article 317, authority to suspend the Chairman or Member of the Commission pending an inquiry by the Supreme Court has been vested with the Governor in the case of a State Commission. If the position is examined in this background it is difficult to suggest that the conduct of a Member of the Commission under scrutiny of this Court in a reference made by the President can be ignored on account of the tenure being over. The Regulation framed under Article 318 by the Governor do not and cannot deal with removal and suspension of a Member of the Commission since they are exclusively covered by Article 317, Part V of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 provides for the payment of pension with the proviso that a Member who has been removed from office shall not be entitled to the same. So far as the government servants are concerned, there are specific set of rules in regard to pensions, inter alia dealing with case in which government servants are found guilty of serious charges committed on the eve of their retirement. The rules governing many services also provide for extending the period of service of the government servant with a view to complete a pending disciplinary proceeding. In the case of a Member of the Commission, the Constitution, while dealing with the removal of a Member, does not provide for such contingencies. The issue, therefore, must be treated as a live one even after the expiry of a Member's tenure. The President of India has requested this Court to investigate into the conduct of a Member and this Court ought to convey its conclusions rather than refuse to answer the question. During the

bearing of the case, we enquired from Sri Mittal, the learned counsel for Sri Saini, whether, in the event of this proceeding being dropped as suggested on his behalf, he is ready to give up his claim for salary for the period he was under suspension and for pension, and Sri Mittal after taking instruction from Sri. Saini, who was present in court throughout the arguments stated that the respondent would not give up his claim and would demand arrears of his salary and pension.

9. The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution. In our view the decision dealing with service cases relied upon on behalf of the respondent have no application to the present matter and the reference will have to be answered on the merits of the case with reference to the complaint and the respondent's defence.

10. The evidence which has been led in this case is voluminous. The details dealing with the admission of evidence had been considered by this Court earlier and after considering the relevant constitutional provisions, the Codes of Civil and Criminal Procedure and the Supreme Court Rules, an order in this regard was passed on August 17, 1983 ((1983) 4 SCC 258). There is no grievance by the parties before us on this aspect, excepting the contention on behalf of Sri Saini that he has been prejudiced in his defence on account of non-availability of a number of documents, with which we do not agree.

11. We have gone through the entire evidence in the case and have heard elaborate arguments by the learned counsel representing the parties. The questions which have now to be answered are :

(i) Whether Sri Saini had slapped Smt. Chowdhary and if, so, in what circumstances ?

(ii) Whether Sri Saini acted in a manner which rendered him liable to be removed from his office of Member of the Punjab Public Service Commission ?

12. The allegation of Smt. Chowdhary which she made in her letter dated November 24, 1982 has been mentioned earlier. The letter was drafted by her in her office room immediately after the incident. Immediately thereafter the other three Members, Sri Deol, Sri Brar and Sri Lall drafted a joint letter addressed to the Governor, which reads as follows :

"With great regret we saw a dastardly happening today in the Commission premises. When we were walking down the corridor from the Committee Room after the day's interviews with the candidates, Mr. G. K. Saini was walking ahead with Mrs. Santosh Chowdhary, the Chairman. She was apparently enquiring from him about his absence from the interviews on the previous two days. Just outside the Chairman's office, Mr. Saini asked the Chairman to give him in writing. Mr. Saini without any provocation slapped her right across the face.

This dastardly incident has left us all completely stunned and shocked. Apart from anything else, this transcends all civilised behaviour not only to the Chairman of the Commission but also to a lady who deserves the highest courtesy.

We would like to place on record our great sense of shock at this uncivilised and criminal behaviour. We humbly submit that we would not like to sit on the

Commission with Mr. G. K. Saini. We strongly urge that action may kindly be taken to have him removed from such a high office forthwith."

It was decided by all four of them that is, the Chairman and the three Members, to report the matter personally to the Governor and with that view they all proceeded to Chandigarh. The Governor, was however, not available before December 1, 1982, and the matter was reported to the Chief Minister Sri Darbara Singh and the letters were handed over to him. The Chief Minister called Sri K. D. Vasudeva, Chief Secretary, and directed him to take necessary action. Sri Deol, Sri Brar and Sri Lall also made statements before the Chief Secretary on solemn affirmation on December 20, 1982 which were recorded by the Chief Secretary and signed by the Members respectively. According to the statements before the Chief Secretary, Sri Deol, and Sri Lall suggested to Sri Saini that he should immediately apologise to Smt. Chowdhary but he refused to do so. In the meantime Sri Brar accompanied Smt. Chowdhary into her room where the other two Members also joined them, after leaving behind Sri Saini in his room. Sri Deol further stated that when he asked Sri Saini as to why did he behave in the rude and uncultured manner, he replied in Punjab that "this is the way we do it". They all insisted that without any provocation from Smt. Chowdhary Sri Saini had slapped her. In respect to the letter dated December 15, 1982 of the Chief Secretary, Sri Saina, vide letter dated December 24, 1982, besides taking preliminary objection to the said letter which was in substance a show cause notice, placed is version of the incident in the following words :

"On November 24, 1982, when we came out of the Committee Room, she took me ahead of all other Members since she said that she wanted to talk to me alone, so that other members could not hear. I followed her. She demanded explanation as to why I had not attended the meetings on the preceding two days. I told her that I had informed her in advance. But she insisted that the application should have been submitted and got sanctioned from her in advance. I told her that she was proceeding against the decision of the Public Service Commission taken around July 1981 by all the members. I told her to give in writing so that I could seek a fresh mandate. I told her that the Chairman alone could not overrule the decision of all the Members. She felt I was challenging her seniority. She lost temper and was going to attack me with a raised hand, when I caught her hand to avoid attack and insult. It is absolutely incorrect that I gave any slap or in any other manner attacked her.

The other Members, who were at some distance, reached later. Some candidates, who had come for interview that day and some office staff had reached earlier and separated us.

Sarvshri H. S. Deol and W. G. Lall took me aside and asked me to go to the Chairman, who they said was a lady. I told them that I have been wronged but they should not add insult to injury by making me to go to the Chairman."

He told the Chief Secretary that he came from a renowned family of lawyers and that his elder brother had held a judicial post for three decades and had retired from the post of District and Sessions Judges. He was himself a lawyer of 18 years standing and was of a cool temperament never losing his temper which would be supported by the members of the public, He further said that his relations with Smt. Chowdhary, who was his neighbour, were most cordial, and the two families were on visiting terms. When his son was involved in a road accident Smt. Chowdhary was very sympathetic and helpful to him and the two had been going to the office on many occasions in the same car. However, the unfortunate incident happened mainly due to the temperament of the

Chairman. She suffers from a complex that she is the 'boss' and nobody could express an honest difference of opinion even on trifling matters. In the past she had been behaving in a wholly unreasonable manner with the Members of the Commission including one Sri Mitha, retired earlier and Sri Deol the sitting Member. All this can be proved from the records available at the Governor's Secretariat. Explaining as to why the other Members were supporting Smt. Chowdhary, the respondent stated that they became hostile to him as he had refused to apologise to the lady. He also pointed out that although they had indicated in their earlier letter that they did not like sitting with him, as a matter of act, they continued holding the interviews of the candidates along with the respondent.

13. After service of notice issued by this Court all these five persons as also Sri Darbara Singh, Chief Minister, and the Chief Secretary and a number of other persons who claimed to have information of the incident filed their affidavits before this Court. Sri Saini filed a long affidavit along with annexures which is included at pages 19 to 90 in Vol., I of the paper book. He also filed separate counter-affidavits explaining his stand with reference to the statements made by the other persons so far they went against him. The counter-affidavit of Smt. Chowdhary in reply to Sri Saini's affidavit also a detailed one and is included at pages 1-34 of Vol. II of the paper book. Other further affidavits filed by many persons described as counter-affidavits or rejoinder affidavits or affidavits in reply were filed before the Court in 1983.

14. Apart from denying the version of the incident as presented in the complaint petition and the affidavits of the Chairman, Sri Saini has attempted to give the background in which the present accusation has been made against him. According to his case, there were two groups in the ruling Congress Party in Punjab, one led by Giani Zail Singh, who later became the President of India, and the other of Sri Darbara Singh. Sri Saini was appointed a Member of the Public Service Commission on May 30, 1980, that is, just a day before the General Elections for the State, in which Sri Darbara Singh emerged as the leader. He took charge of the office of Chief Minister on June 6, 1980 and was disappointed to find that the constitution of the Commission was complete with the Chairman and five Members. In August 1982 Sri D. S. Sodhi one of the Members retired and Sri Darbara Singh wanted to have his nominee in his place. The Governor, Sri Chenna Reddy, however, declined to fill up the sixth post and Sri Darbara Singh was, therefore, piqued at the situation. He became determined to get his nominee appointed even if it required some manoeuvre for creating the vacancy. In the meantime some misunderstanding developed between Sri Darbara Singh and the wife of Sri Saini, Smt. Krishna Chowdhary, who is a social worker. Smt. Krishna had led a deputation of the villagers of certain locality to the then Prime Minister Mrs. Indira Gandhi and the Chief Minister felt that this was a move against him and he threatened her publicly. Both the Chief Minister and Smt. Krishna have been examined as witnesses in this case and have been cross-examined at considerable length, Mr. Mittal the learned counsel for the respondent, developed the theory of a conspiracy in his argument on the basis of the evidence led in the case and argued that Sri Darbara Singh hatched out the conspiracy to get the respondent removed from his office, to which Smt. Chowdhary became a colluding party. When a minor incident took place on November 24, 1982 she exploited the situation to her advantage with a view to please the Chief Minister, and the Members being impressed by the drama enacted by her, fell for her story. It was argued by the learned counsel that the original complaint petition of Smt. Chowdhary which was drawn up like an FIR was not traceable on the records of the Governor's Secretariat and could not be filed as evidence. Referring to its xerox copy it was pointed out that the same did not bear any official number of the office of the Public Service Commission, and the endorsements made thereon were also characterised as suspicious. The Governor was to return to Punjab by the end of the month, but without waiting for a single day the Chief Minister decided to take immediate hasty step on the

complaint and directed the Chief Secretary accordingly. Relying on the evidence which indicates that Smt. Chowdhary along with the other three Members and a stenographer, travelling with his typewriter in another car, all proceeded from Patiala to Chandigarh. It was urged that if the complaint petition and the joint petition of the three Members had already been drafted at Patiala, where was the necessity of two car loads of people along with a typewriter to proceed to Chandigarh. The argument is that Smt. Chowdhary took care of taking the three Members to meet the Chief Minister and get committed to their story thus closing their way to return to the truth. The evidence of several other witnesses examined in support of the defence of Sri Saini's version of the incident was also relied upon.

15. The learned counsel for the respondent placed the subsequent statements of the three Members of the Commission and contended that they show a clear departure from their original stand. Similar criticism has been made against the evidence of Smt. Chowdhary also. In our view, there is no vital difference in their statements made from time to time which may render their evidence doubtful. But before we proceed to examine the evidence in detail on this aspect, we would briefly indicate the nature of the other evidence led in the case.

16. A number of affidavits were attached to main affidavit of Sri Saini filed in this case on March 1, 1983. In these affidavits sworn on February 28, 1983 and March 1, 1983, some of the deponents claimed to be by-witnesses of the incident, and they denied the story of slapping of the Chairman by the respondent. They are Ujagar Singh, Avtar Singh, Labh Singh and Hakam Singh. According to their version it was the Chairman who was shouting at the respondent and had raised her stand in air. Hakam Singh subsequently did not support his earlier statement and according to the case of the respondent supported by a second affidavit of Ujagar Singh, he had been won through the police. The respondent had also attached an affidavit of his wife stating that she being a social worker had met the Prime Minister to press the grievance of certain villagers which enraged the Chief Minister. The Chief Minister subsequently threatened her with a warning that she would be set right. This story has been again supported by the affidavit of Labh Singh, Bakshish Singh, Niranjan Singh, Mahendra Singh and Swaran Singh. Two advocates Santosh Singh Gil and Hari Mohan Singh Pal stated on affidavits that Sri Saini came from a respectable family and was known for this cool temper and good manners. Some of the deponents later disowned the statements in the affidavits; and another affidavit was filed on behalf of the respondent stating that this was the result of an attempt by the other side to won over the witnesses through the police. This allegation has been denied by the police witnesses M. S. Bhuller and Narender Pal Singh.

17. So far the case of the respondent about the actual incident is concerned, he has narrated his version in several affidavits filed in this proceeding. With respect to what actually happened soon after 1.00 p.m. on November 24, 1982, he admits that there was some unpleasant incident, but the story given out by the Chairman and the other Members is incorrect. It is claimed that it was a minor affair which was later blown out of proportion with a view to harm him and get the post occupied by him vacated. Mr. Mittal has contended that if it were not so, the newspapers would have reported the story immediately after November 24, 1982, but the incident was not reported in any paper before December 11, 1982 when the daily newspaper "Indian Express" for the first time stated that it was a case of heated exchange between the Chairman and the respondent outside the Committee Room. The report has been fully quoted in the respondent's reply which further stated that some Members and employees of the Commission were witnesses to the angry exchange and although the Chairman refused to talk on the issue, her husband when contacted, described the incident as a minor one. The statements of the respondents as to what exactly happened may be at this stage considered. According to his rely sent to the Chief Secretary, the Chairman was

expressing her displeasure on his absence on the previous two days and was insisting that an application should have been submitted and sanction obtained from her in advance. This part of the respondent's statement has been quoted in paragraph 12 above. The respondent reminded her of the decision taken by the Commission in July 1981 to the contrary and told her that if she wanted to overrule the decision she would say so in writing. This reply agitated her and she lost temper and was going to attack him with a raised hand which he caught to avoid the attack. Besides this, he did not do anything else. The other Members who were a little behind, reached the place where this incident happened, later. Some candidates who had come for interview and some members of the office staff intervened and separated them. In his subsequent affidavit filed before this Court the respondent however said in paragraph 1 that the reference had been made "on an allegation against the deponent which as a fact never occurred and what was only a heated exchange of words between the deponent and the Chairman of the Public Service Commission, Punjab on November 24, 1982 at about 1.15 p.m. has been blown out of proportion by the interested parties for securing their personal ends." The respondent then quoted the report which appeared in the "Indian Express" mentioning only the heated exchange. Towards the end of paragraph 3 of his affidavit he further argued that, "If it was actually a case of physical assault like 'slapping' a dignity like a Chairman of an august body i.e. the Commission, the reporter could not have ignored that fact just to report it as a 'minor' incident and only as a 'heated exchange'. This is not consistent with either his earlier statement or with the detailed account mentioned in the affidavit where he once more stated that he "noticed one hand of the Chairman going high up in the air and the deponent, with the state of mind that he was in at that time after a humiliating interrogation by the Chairman, thought that the raised hand of the Chairman might not come upon the deponent as a blow and as such the deponent just intercepted that raised hand of the Chairman by raising his own hand and bringing her raised hand down by that effort." The respondent, however, is not emphatic in claiming that the Chairman had really intended any physical harm or insult to him by her raised hand. The following statement in his affidavit is relevant in this connection :

"If the Chairman really intended to give a blow to the deponent by her raised hand then the deponent was fully justified to make an attempt at warding off that intended blow to save himself from further humiliation publicly and if the raised hand of the Chairman was not intended for a blow at me but was only an involuntary mannerism on her part in that moment of her great excitement induced by her own self by a mistaken belief in her own importance being deflated by a supposed subordinate in authority then also the deponent's action was justified the attending circumstances when nothing but an ill motive on the part of the Chairman could be conjectured and concluded in that moment of confusion, on the part of the deponent."

18. The main witnesses of the unfortunate incident are the Chairman, the respondent and the remaining three Members, of the Commission, and they are consistent about a physical impact between the Chairman and the respondent. The other witnesses relied upon by the respondent who denied any physical contact between them cannot be believed, and we do not propose to discuss their evidence at length. Dr. Vinod Gupta and Dr. Satyadev Saini asserted in their affidavits that the Chairman was shouting at the respondent and thereafter went to her room. Dr. Saini described the tone of the Chairman as insulting. He said that after the intervention of some persons, she went to her room. Even the respondent does not simplify the entire happening as the two doctors have attempted to do. They appear to have been based against the Chairman and were making false statement to protect the respondent. Dr. Gupta in his cross-examination insisted that although he was getting only a stipend for the house-job and was anxious to get a service, he and his colleague Dr. Saini decided to travel to Delhi, engage a lawyer and pay for the affidavits that were filed. The

claim is that they were doing it as members of the public in response to call for justice, but their statements in cross-examination expose their hostile attitude towards the Chairman. We have no hesitation in rejecting their evidence as unreliable. The affidavits of the other persons and their evidence do not do any credit to them and we will close this chapter by rejecting their statements as undependable. The main issue with respect to the actual incident must, therefore, be decided on a consideration of the affidavits of the respondent, and the affidavits and evidence of the Chairman and the other three Members of the Commission in their cross-examination. So far the respondent is concerned, he first decided to examine himself as a witness, but later declined to do so. After the case was closed by the Additional District and Sessions Judge an application was made on his behalf stating that he had changed his mind and that he was on his way to the court for being examined as a witness, but somehow his arrival was delayed. The Additional District and Sessions Judge did not reopen the matter and we think rightly. We do not believe that the respondent had really intended to appear as a witness to be cross-examined and the belated application was filed merely by way of an excuse. The respondent was within his rights not to appear in the proceeding as a witness, specially because on the allegation made against him he was entitled to consider himself in the position of an accused in a criminal case. But he should have boldly taken this stand in the proceeding and should not have vacillated from one stand to another and from one excuse to another from time to time. As a respectable member of the bar and as a Member of the Public Service Commission one would expect from him a straight forward approach and we do not appreciate his attempt to invent an alibi.

19. It has been argued on behalf of the respondent that the issue must be examined in the background of the circumstances indicating a deep conspiracy to oust the respondents from the Commission hatched out at the instance of the Chief Minister by the Chairman and others. Reliance was placed on the affidavit of his wife Smt. Krishna Chaudhary (who has been referred to during the hearing as Smt. Krishna so as to avoid the confusion between her name and the name of the Chairman) which was filed along with the main affidavit of the respondent. She is a social worker and has been rendering public service in various capacities detailed in her affidavit. She has stated about her visit to the residence of the Chief Minister, Sri Darbara Singh, in the company of her husband and the Chairman. She says that on seeing her and her husband the Chief Minister lost his cool and declared that the Public Service Commission would be dissolved. From the manner in which the attack proceeded, it was clear to her that the "outburst was directed against her husband", the present respondent. At the end of the meeting the Chief Minister asked the respondent to align with the Chairman and follow her instructions. She has described another incident when she had to face the wrath of the Chief Minister earlier. She was espousing the cause of certain villagers and in that connection led a delegation to the Prime Minister Smt. Indira Gandhi. The Prime Minister after giving a patient hearing to her, sent a telex message to the Chief Minister instructing him to do the needful, and accordingly Sri Darbara Singh paid a visit to the village in question in March 1981. There he made a pointed inquiry from the villagers as to who had led and prompted them to go to the Prime Minister instead of approaching him. When he learnt that it was Smt. Krishna who had gone to the Prime Minister with their case, the Chief Minister shouted at her expressing his deep displeasure. She appeared before the Additional District and Sessions Judge for cross-examination. Her deposition in the case attempted to evade many questions which she thought would show her in bad light. Asked about her unsuccessful attempt to get a party ticket for the election to the State Assembly, she first stated that she had never made an application, but later she had to correct it by accepting that she had asked for the party ticket from Anandpur Saheb Constituency which was refused. From the evidence on the record it is clear that members of both the families of the respondent and his wife's father have been respectable Congressmen of Punjab, and their presence in the public life of the State cannot be ignored. But when Smt. Krishna was asked about various

detailed of her association in the political field she did not come out with straight forward answers. She had been arrested and put in custody for about 2 months during the Janata Party regime in the country in 1977-1979 along with Sri Darbara Singh and several other Congress workers. With a view to evade the questions which were being put to her about her company and the manner in which she conducted herself during that period, she first said that she did not recollect when she underwent the imprisonment and that the other persons mentioned by the cross-examining lawyer "might have been" also there. Another line which was pursued in her cross-examination was about her and her husband's financial position. About receiving donations for social work, she claimed that she stopped collecting donations after her husband became a Member of the Public Service Commission, Several questions were asked about the income of her husband from his law practice as well as that derived from his ancestral properties but she evaded to give the necessary information. She said that she did not have any idea as to the extent of the family properties and the income available therefrom. Nor could she say whether her husband was paying income tax or not before he became a Member of the Commission. However, pursued further she had to admit that the income from the properties could not be substantial. We are not here concerned with the actual properties belonging to the respondent or his income, but the manner in which Smt. Krishna answered the questions put to her in her cross-examination becomes relevant as it shows that she did not have unflinching respect for truth and that she is capable of making a statement which may suit her. Reliance has also been placed on the affidavits of several other persons in support of her story about the threat publicly given to her by the Chief Minister. For the reasons briefly indicated below they also cannot be believed.

20. One of the affidavits supporting the version of the Smt. Krishna was by Labh Singh filed in this Court along with the counter-affidavit of the respondent. The affidavit runs in five paragraph and the deponent mentioned several dates in relation to the incident on five occasions, but in his cross-examination he conceded that he was totally illiterate except for putting his signature in Urdu, and that he had no idea about the English calendar month either, which has been used in his affidavit. In his affidavit he has described the present case correctly as a reference under Article 317(1) of the Constitution. But in his cross-examination he admitted his complete ignorance about the Constitution as also about the nature of the present proceeding. When a pointed question was asked in this regard, he said that what he meant to say in the counter-affidavit was that Sri Darbara Singh was a liar. He had also to say that he did not know what was typed in the affidavit. His statements clearly indicate that he was under the influence of the respondent and his wife and was lending his name to the affidavit without having any idea of its contents. He does not any respect for truth as indicated by the contradictory statements made in regard to his alleged relationship with the respondent and about the alleged incidents in which Sri Darbara Singh is said to have given an open public threat to Smt. Krishna. Identical affidavits sworn by Bakshish Singh, Mahinder Singh and Sarwan Singh were also filed. Sarwan Singh was also cross-examined at considerable length and his statements are equally undependable. He was Sarpanch for some time and was attached to the family of the respondent for decades. He admitted his association with Smt. Krishna for 25-30 years. Another person by the name of Niranjana Singh claimed to have been a witness of the threat by Sri Darbara Singh. The witness was cross-examined at length. He has not fared better than the other. We are not impressed by the affidavits of the others, and we do not consider it necessary to deal with their evidence individually except mentioning that there has been some controversy as to whether there was an attempt on the part of the Chairman through the State police authorities to influence the witnesses. Affidavits and counter-affidavits have been filed by the parties in support of their respective stands. None of these affidavits inspires confidence. Sri Darbara Singh has filed his affidavits denying all the allegations made against him about his annoyance with Smt. Krishna and

the alleged threat to her; or his prejudice to the respondent and complicity in any conspiracy. He stated that Smt. Krishna never saw him nor did he receive any direction or message from the Prime Minister in regard to any grievance of the villagers and there was no question of his having threatened Smt. Krishna. He appeared as a witness and was cross-examined at length. His deposition is at pages 813-879 of Vol. V of the paper book, a portion of which was read by the learned counsel for the parties during the hearing. A large number of questions in regard to the internal politics of the Congress Party in Punjab were put to him. It was suggested that he and Giani Zail Singh were heading two rival factions of the Congress Party. The Chief Minister evaded such questions by saying that there is a single Congress Party known as Congress (I). We do not consider his reluctance to discuss the internal matter of the Party as unnatural and we cannot draw any inference against him on that account. There is nothing in his deposition indicating that his denial of the allegations made against him by the respondent and his wife is not worthy of acceptance. The story of his outburst against the respondent in presence of other persons and against Smt. Krishna in the presence of a large number of villagers is neither nor supported by the circumstances; and the evidence led is wholly undependable. For this conclusion we are not depending on the evidence of the Chairman with respect to the alleged interview when Sri Darbara Singh is said to have expressed his displeasure to Sri Saini.

21. It has been argued on behalf of the respondent that the complaint petition of the Chairman and the joint letter of the other three members of the Commission were not drafted at Patiala and came into existence later at Chandigarh after a deliberation by all the collaborators of the conspiracy. As has been mentioned earlier, the argument is that while the Governor was away on leave, the matter should have awaited his return and should not have rushed through by sending the complaint to the President of India for immediate action. It has also been said that the issue was not placed even before the Cabinet before taking these steps and it was only belatedly that a post facto resolution in this regard was got passed by the Cabinet. We have given our anxious consideration to all these aspects and we do not find away any merit in the argument of the learned counsel for the respondent that the theory of conspiracy is fit to be accepted. We, therefore, reject the case of Sri G. K. Saini of a conspiracy to get him removed from the office of a Member of the Commission.

22. The main question is as to whether the allegation of the Chairman about Sri Saini giving her a slap is correct or not. Smt. Chowdhary was cross-examined for several weeks and her statement is at pages 1-181 in Vol. III of the paper book. Her family and the family of her husband are quiet respectable and have been taking keen interest in the State politics. Her father became a Member of the Rajya Sabha in 1975. Earlier he was a Deputy Minister in the erstwhile State of Pepsu and later of Punjab. Her father-in-law was also a Member of the Lok Sabha since 1980. Earlier he was a member of the State Assembly for several decades. The Chairman was married in 1968, passed her B. Ed. examination in 1971 and soon thereafter became a Member of the Public Service Commission. Mr. Mittal contended that she was an inexperienced young person not well-equipped for work of the Commission, much less for the office of the Chairman and was pushed forward because of her connections with the Congress Party. It has been suggested by the learned counsel that her father or some other member of her family must have been instrumental in getting the present Reference made, but we do not find any reason to assume so and we will have to judge her statement independent of this consideration. We also accept her case that she was not a tool in the hands of Sri Darbara Singh and did not take any step at his behest or with a view to please him.

23. The evidence in the case, however, does indicate that the Chairman was attempting to exercise her power in an authoritarian manner and lost her patience even with her colleagues if she was not readily obeyed. She claims that it is the prerogative of the Chairman of the Commission to announce

the results of interviews with candidates but as a matter of grace she consulted her colleagues before so doing. On more than one occasion in the past she got annoyed with the other members and attempted to get them removed from the Commission. In their letter to the Governor of Punjab Sri Mitha, the then Member of the Commission, and Sri Deol detailed the misbehaviour on her part and alleged that she was in the habit of threatening the Members to accept her commands whether right or wrong, while boasting of being capable to get any member, who did not obey her, removed and otherwise harassed. In paragraph 24 of his affidavit Sri Saini has stated that Smt. Chowdhary had made a complaint against Sri Mitha and Sri Deol to the Governor raising untenable charges, but the Governor in his wisdom admonished her for the frivolous nature of the charges. In her reply to the said statement Smt. Chowdhary argued that the incident was not relevant for the purpose of the present inquiry, but in dealing with the factual aspect she did not deny its correctness. In this cross-examination Sri Deol stated how two years earlier, when he was also absent for a couple of days, the Chairman sent him a note telling him that he had absented without prior information, and to which he had reacted by a query about the rule in this regard. Ultimately the matter had to be discussed in a "meeting of the Members". Sri Saini has also asserted in his affidavits that a decision was taken on this issue in a meeting of the Members of the Commission, but the Chairman still continued to deal with the question of absence of the Members in her own way. So far as the complaint of Sri Mitha and Sri Deol to the Governor against Smt. Chowdhary is concerned, the prevaricative answers given by her during this part of her cross-examination leave an indelible impression that she does not associate any merit with being frank and straightforward. She however admitted that some time in November 1980 she had made a complaint against Sri Mitha and Sri Deol to the Governor (page 74, Vol. III of the paper book). She further stated that she was not given a copy of the complaint made against her, but she had to accept that around February 1982 when she and the other Members of the Commission met the Governor on an invitation by the latter for a cup of tea, Sri Mitha complained that whenever she was personally on an Interview Board and an expert had to be appointed, she would never consult the other Members. According to her version the Governor upheld her stand by declaring that it was her prerogative as the Chair man of the Commission. The manner in which she contradicted herself on matters of details about the said complaint reinforces the conclusion that not all her testimony can be taken at its face value. However, that does not conclude the case. The other three Members of the Commission have pledged their oath in support of the allegation that the respondent had slapped the Chairman. The circumstances in which the things proceeded also corroborated their version. Over and above all this, the statements made, by the respondent himself go to support to a great extent Smt. Chowdhary's case of physical assault. Let us now consider the evidence of Sri Brar, Sri Deol and Sri Lall.

24. Mr. Brar had served the Indian Army for 38 years before he retired as a Major General. He was the General Officer Commanding, Punjab, Himachal and Haryana, and there is no ground for doubting his veracity as a witness. Mr. Deol was the Head of the Department of Political Science at G.H.G. Khalsa College. Ludhiana before his appointment as a Member of the Commission, and appears to be a reliable person. According to the case of the respondent, Mr. Deol had himself earlier protested against the manner of functioning of the Chairman which in his opinion amounted to misbehaviour. The Chairman also had made a complaint against him to the Governor on the basis of some frivolous charges. It cannot, therefore, be legitimately suggested that he was either such a close friend of the Chairman or under her thumb so as to concoct a story and send a letter to the Governor immediately after the unfortunate incident. Although many suggestions were thrown to him and to Mr. Brar in their cross-examination for the purpose of an argument that they should be disbelieved, we do not find any substance there in. We are satisfied that what prompted them to act in the present case was not their interestedness in the Chairman or any prejudice against the

respondent, but their disapproval and shock at the physical violence in which the respondent indulged in the open corridor of the Commission building. So far as Mr. Lall is concerned, in the opinion of Sri Saini, he did not have requisite qualification for being appointed as a Member. According to the case of the respondent, Mr. Lall may have been prejudiced against him on account of his (respondent's) view on Sri Lall's eligibility to hold the office, but that does not explain his conduct in joining the other two Members in their complaint against Sri Saini.

25. Mr. Mittal elaborately dealt with the direct evidence of the incident and urged that there were discrepancies in the statements of these three witness sufficient to discredit their testimony. We are not in a position to agree with him and we proceed to briefly indicate out reasons.

26, Let us now consider the evidence with respect to the details of the incident. Admittedly the Chairman, the respondent and the other three Members of the Commission were, in the Committee Room on November 24, 1982, interviewing candidates for appointment to certain posts. The sitting continued till about 1.15 p. m. when all the aforesaid five persons along with Dr. P. R. Sondhi (Retired Director, Haryana Health Service), who was assisting the Commission as an expert, came out of the Committee Room through the doors opening into the corridor. A plan of the building has been placed on the records of this case. Admittedly the entire party of six started moving in the same direction towards the office of the Chairman. The Chairman indicated her intention to talk to Sri Saini about his absence, in privacy, and the two proceeded further, forming a separate group, and the other Members discretely slowed down their pace. Dr. P. R. Sondhi has not appeared as a witness in the case. When the respondent and the Chairman were near the doors of the office of the Chairman, the physical act of the incident took place. Earlier the Chairman had expressed her displeasure on the absence of Sri Saini. Sri Saini insisted that he had informed the office in advance, and that she must put in writing whatever she had to say. According to the evidence of the Chairman, she asked Sri Saini as to what was there to put in writing and she was going to complete the sentence by adding that she would put in writing whatever Sri Saini would suggest, but before she could do so, she received from Sri Saini a hard slap across her face. She says that his happened when she was politely talking to Sri Saini. We are not inclined to accept her statement that the respondent had slapped her "without any provocation" as stated in her complaint petition and in her first affidavit filed before this Court, and that she was talking to him "politely" as mentioned in her cross-examination. The version of the respondent with respect to the manner in which she was asking for his explanation may be correct. She was used to her arrogant ways and authoritarian manner while talking even with her colleagues, and hence the statement of Sri Saini may be correct that she was assuming a "bossy posture" and "was insisting on a spot oral explanation" from him. The respondent was a lawyer of 17 years standing when he was appointed a Member of the Commission. The evidence does not indicate that he was schizophrenic prone to be excited without a cause and it would therefore be very unnatural to assume that although the Chairman was talking to him politely and did not give any reason for provocation whatsoever the respondent hit her.

27. All the three Members of the Commission are unanimous and emphatic in stating that the respondent did slap the Chairman hard on her face. They also say that this was without provocation. By this part of their statement we understand that there was no physical provocation on the part of Chairman Mr. Mittal, the learned counsel for the respondent, strenuously contended that their evidence also suggests that the Chairman was not talking rudely or in a bossy manner with the respondent when the latter hit her, and this is very unnatural. We have gone through their affidavits as well as their statements in the cross-examination. The affidavit and evidence of each of these witness have to be considered in their totality and a part of a sentence in their deposition cannot be allowed to be picked up in isolation and analysed and scanned as a statutory provision. In their joint

letter written to the Governor soon after the incident they stated thus :

"Mr. G. K. Saini was walking ahead with Mrs. Santosh Chowdhary, the Chairman. She was apparently enquiring from him about his absence from the interviews on the previous two days."

Sri Brar was asked in his cross-examination about the use of the word "apparently" and he explained that while discussing the general details of the conversation Sri Lall and Sri Deol were not sure of having heard the first portion of conversation. Sri Deol stated that the Chairman asked Sri Saini to come ahead and therefore they, that is, the other Members, slowed down in their pace. In the statement recorded by the Chief Secretary, Sri Lall also said that the Chairman and the respondent were walking ahead and they "overheard" the Chairman. The picture which emerges is that the talk between the Chairman and the respondent was not meant for others and they were not talking very loudly. It is, therefore, not expected that the Members could have every single words which passed between the two. If their voice was not raised and they were not shouting at each other, one would not assume that there was a quarrel going on. In this background the Members in their joint letter used the word "apparently". Their statement that the attack on the Chairman was without any provocation was based on the physical side of the entire incident and was an expression of opinion with regard to it. Although, however, they could not hear their talk properly, which was going on not in high-pitched or raised voices, it cannot be suggested that they were not in a position to watch as to what the two were actually doing. It was daytime and from the plan which is on the records of the case it is clear that the place where all this was happening was not poorly lighted. The total distance between the Committee Room and the office of the Chairman was 66 feet and the distance between the two groups could not be so long so as to place the Members of the Commission as not to be sure about the physical activities of the two ahead. Their impression as to what they actually saw cannot be confused with what they could make out of the discussion going on between the two. The consistent evidence also indicates that the Chairman and Sri Saini were walking ahead while approaching the office room and before the assault took place they had reached the door and were standing there, The witness, however, did not stop and continued walking towards the Chairman and the respondent. The suggestion of Mr. Mittal, appearing on behalf of the respondent, that if they could not hear the talk going on between the parties properly, they could also not see the physical side of the incident cannot be accepted. The three witness were cross-examined at great length and were subjected to a very large number of searching question and we do not find any material coming out of the same on the basis of which they can be discredited. We accordingly rely upon their evidence which indicates that although they were not able to properly hear the talk going on between the Chairman and Sri Saini and picked up only fragments of discussion, they clearly watched their physical activities without any chance of mistake. Their version of the physical part of the incident must, therefore, be accepted which is to a great extent corroborated by the respondent's statements and the affidavits themselves. Accordingly, we hold that the Chairman did not attack or intimidate Sri Saini with physical violence, and Sri Saini losing his self-control at the arrogance of the Chairman in her talk with him slapped her as alleged.

28. It has been contended by Mr. Mittal that from the evidence of Sri Brar and Sri Lall it appears that their group almost reached the point where the Chairman and Sri Saini were standing and except for a very short distance between the two groups they ultimately formed one single group in which the relative position of the Chairman and Sri Saini was such as stated by Mr. Lall in his cross-examination, that it was not possible for the respondent to hit the Chairman hard on her face. For the basis on which any such inference can be drawn, one has to indulge in a lot of imagination. The statements relied upon do not lead to this conclusion. Besides, the description given by the three

witnesses in this regard cannot be scanned with a microscope nor the available evidence is sufficient to determine with geometrical precision the exact points where everybody stood at the crucial moment. So far the version of Sri Saini is concerned, we agree with him that it was not a completely unprovoked situation in which he has hit the Chairman. But we do not accept his statement as correct that the provocation was not limited to a verbal duel and extended to the Chairman raising her hand as if to assault him justifying him to slap her.

29. Mr. Mittal has also relied upon certain circumstances which according to him disproved the case of the complainant. Great emphasis has been led on the statement of Smt. Chowdhary's husband to the press describing the incident as a minor one. This is a natural conduct. If a lady occupying the high position of a Chairman of a Public Service Commission is physically assaulted, it is expected that people closely related to her and interested in maintaining her high dignity would like to hush up the matter rather than give it a wide publicity. It is, therefore, not possible to discredit the story of assault on the basis of the newspaper report. It has been next argued that having regard to the incident taking place in the open corridor of the building and the position of the room or the rooms where the members of the staff sit, it was to be expected that at least some members of the staff must have witnessed what had happened but none has come as a witness to support the allegation. This also is not an unexpected conduct on their part. There is nothing unnatural if they decided not to involve themselves in their individual capacities in a dispute of this nature. Besides, there is a resolution on the record of this proceeding passed by the members of the staff collectively condemning the incident in general terms. It has been suggested on behalf of the respondent that this has been obtained by the Chairman by exercising her influence. If some of the employees of the Commission had come to the witness box, the same criticism would have been made by the respondent against their evidence. We are also conscious of the fact that Sri Sondhi who was assisting the Commission as an expert has not been examined in the case. This merely indicates that he was not willing or available to support either party.

30. The consistent evidence of the three Members of the Commission further indicates that an attempt to bring about a reconciliation by persuading the respondent to tender an apology was made but failed. The Chairman was under great stress both physical and mental and she had to be consoled by her colleagues. We would at this stage again emphasise that no special reason can be suggested for the Members to cook up a false story, specially when they had also earlier tasted the arrogance of the Chairman, and complaints and counter-complaints between her and at least one them had reached even the case of the Governor.

31. Now the question is whether Sri Saini deserved to be removed on account of his conduct, Persons occupying high public offices should maintain irreproachable behaviour, A certain minimum standard of code of conduct is expected to them. What may be excusable for an uneducated young man cannot be tolerated if a member of a Public Service Commission is involved. Besides, it has to be remembered that the respondent and the Chairman were not thrashing out a personal matter or a private dispute. They were discussing a question involving their office and this in broad daylight in the open corridor of the Commission's building. Whatever the provocation offered by the Chairman, the respondent was not justified in losing his cool to the extent of indulging in physical violence. That the violence should have been directed against a lady makes his conduct all the more reprehensible. In our view, Sri Saini miserably failed in maintaining the standard of conduct expected of a Member of the Commission and thereby brought great disrepute to his office, Hence our answer to the question referred by the President is that Sri Saini's conduct amounted to misbehaviour within the meaning of Article 317(1) of the Constitution and it rendered him liable to be removed from his office of the Member of the Punjab Public Service

Commission.

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