

(1978) 02 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 260 of 1967

Adarsh Kumari Bharti

APPELLANT

Vs

K.N. Sinha and Others

RESPONDENT

Date of Decision : 20-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 233, 233(2), 315

Citation : (1980) ILR (MP) 297 : (1978) MPLJ 215

Hon'ble Judges : P.D. Mulye, J;G.L. Oza, J

Bench : Division Bench

Advocate : A.M. Mathur and K.C. Gangrade, for the Appellant; Government Advocate and K.B. Raijada, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.

This is a petition filed by the Petitioner for quashing of the order of the Government dated 9th July 1976 appointing Respondent No. 3 as Deputy Director, Women's Welfare (in charge of Applied Nutrition) on her being selected by the Public Service Commission. The Petitioner has in fact challenged the selection by the Public Service Commission on the ground that selection was not validly made by the Public Service Commission.

According to the Petitioner she is posted as Deputy Director (Women's Welfare) Incharge of Applied Nutrition, in the Department of Panchayat and Samudayik Vikas, Government of Madhya Pradesh, Bhopal. According to her this is a Class I post on which the Petitioner was working on the date of this petition. It is further alleged that the Petitioner's claim for promotion to this Class I post was Deglected or refused by Respondent No. 4--the State of Madhya Pradesh. Hence she filed a writ petition which was Misc. Petition No. 684 of 1973 and was heard by this Court at Jabalpur and by order dated 6-2-1975 was allowed. A review petition was filed by the State Respondent No. 4 which was also rejected by

orders dated 8-10-1975. It is further alleged that Respondent No. 4 State filed a SLP to the Supreme Court against the judgment of the High Court. The SLP (No. 3564 of 1976) was also summarily rejected by the Supreme Court on 5-1-1977.

According to the Petitioner, an advertisement No. 5 of 1975 in continuation of advertisement No. 15 of 1974 was issued and a temporary post of Deputy Director (Women's Welfare)--a Post Gazetted and in Class I service on revised pay scale of Rs. 650-1150 was advertised. According to the Petitioner in this advertisement the classifications and preferential qualifications were stated. The Petitioner, Respondent No. 3 and about 65 others applied in response to the aforesaid advertisement No. 5 of 1975 and the Petitioner was interviewed on 29th June 1976 whereas Respondent No. 3 was interviewed on 28th June 1976.

It is alleged by the Petitioner that interviews were conducted only by the Chairman of the Public Service Commission (who is joined as Respondent No. 1) whereas the non-members were the Deputy Secretary of Panchayat and Community Development and one Deputy Director of Panchayat and Social Welfare as Departmental Representatives and Smt. Vishakha Dixit. It is alleged that after the interview the result was declared and notified on 29th June 1976 itself which showed Respondent No. 3 as the selected candidate on merit and the Petitioner was put on the reserve list.

According to the Petitioner under Rule 3 of the Madhya Pradesh Public Service Commission (Condition of Service) Regulations 1968, the Commission is to consist of not more than five members and on the date these interviews were conducted, it is alleged that the Commission consisted of three members including the Chairman--Respondent No. 1. It is also alleged that under Rule 5, it was provided that whenever recruitment to a service or post is to be made by selection in consultation with the Commission, the Commission will, after conducting interviews of the candidates, submit the list of candidates selected. It is also provided that the Commission may agree to have at the interview any officer appointed by the appointing authority to represent the Department and may also invite technical experts to advise the Commission. It is further alleged that there are some rules of procedure adopted by the Commission which have been stated in the petition; and on this basis it was alleged that on the dates on which interviews for the post for which the Petitioner was a candidate as stated above were conducted i.e. on 28th and 29th June 1976, the Chairman alone sat at the interviews and the selection was made by him alone. Thus, according to the Petitioner, this could not be said to be a selection made by the Public Service Commission. It was also alleged by the Petitioner in this petition that on the basis of the essential qualifications and preferential requirements the Petitioner was more suitable than Respondent No. 3. It is further alleged by the Petitioner that Respondent No. 1 was interested in the selection of Respondent No. 3 as it is alleged that Respondent No. 3 was very-well known to Respondent No. 1 and they were on visiting terms. It is further alleged by the Petitioner that the appointment of the Petitioner as Deputy Director was held up at the instance of

Respondent No. 1.

On these facts, it was contended by the Petitioner that the selection conducted by the Public Service Commission is illegal as the Chairman alone sat at the interview and there is nothing to indicate that the functions for selection for this post were delegated to Respondent No. 1. It is also contended that there is nothing to indicate that the selection made by Respondent No. 1 alone was ultimately accepted by the Commission as such. It is also contended that the selection done by Respondent No. 1 is bad because of bias.

In the return filed by the three Respondents Nos. 1, 2 and 4, the facts about the filing of the earlier petition and the judgment of this Court are not disputed. It is further stated that in pursuance of the advertisement as alleged by the Petitioner 67 candidates submitted their applications out of which 19 only were called for interview and out of the 19 only 15 appeared and these interviews were conducted on 28th and 29th June 1976. It is also not disputed that in these interviews Respondent No. 3 was selected and the Petitioner was not selected for the post of Deputy Director (Women's Welfare) and the name of the Petitioner was kept in the reserve list. It is also admitted that this selection was communicated to the Government on 30th June 1976 and that on 9th July 1976 Respondent No. 3 has been appointed as Deputy Director. As regards interview having been conducted only by the Chairman in this return the fact that it was the Chairman only who conducted the interviews is not disputed; but it is stated that the two other members were busy holding other interviews for the post of Lecturers in the Education Department. It is however contended that the selection by the Chairman alone is not illegal. It is also admitted in this return that the result of the interview was declared on the 29th June 1976 itself and was put on the Notice Board.

As regards the Madhya Pradesh Public Service Commission (Condition of Service) Regulations, these Respondents in their return admitted them. But as regards the rules of procedure, it is stated that these rules of procedure were only applicable to the meetings and are only executive instructions framed by the Public Service Commission; but they do not apply to the conducting of interviews and they have no statutory sanction. It is further contended that the Chairman alone sat at these interviews because the other two Members were busy with other interviews. It is also disputed that Respondent No. 3 does not possess the necessary qualifications. The allegation about Respondent No. 1 that he was known to Respondent No. 3 and they were on visiting terms also is denied. It is further alleged that the Madhya Pradesh High Court sitting at Jabalpur in their judgment had held in favour of the Petitioner that she was entitled to continue as Deputy Director (Women's Welfare) till selection was made by the Public Service Commission. It is also admitted that SLP was filed; but it is stated that the Petitioner was permitted to continue on this post till the selection is made. It is further contended in the return that there is no statutory provision requiring all the members of the commission to sit at an interview and prohibiting the

Chairman alone to conduct interviews for a Class I post. The bias alleged against Respondent No. 1 was also denied.

This return was filed on 30th July 1976. But during the course of arguments it appears that the learned Government Advocate appearing for Respondents 1, 2 and 4 submitted an application seeking to amend the return by stating that when these interviews were to be conducted the Chairman by his own order constituted the Board of interview and nominated himself to conduct these interviews for the post of Deputy Director (Women's Welfare) and he also constituted another Board of the other two members for interviews of Lecturers in Biochemistry and Pharmacy. Along with this application learned Government Advocate also submitted a note-sheet which shows that the Secretary of the Commission submitted a note to the Chairman for Constitution of the Boards and the Chairman by his own orders constituted the Boards as stated in this application.

During the course of the arguments learned Government Advocate also sought permission to file an affidavit of Respondent No. 1 denying the allegations about his being interested in Respondent No. 3, although such an affidavit in spite of the fact that Respondent No. 1 was joined as party to this petition was not filed till then. But learned Government Advocate during the course of arguments also submitted art affidavit filed by Respondent No. 1.

Learned Counsel appearing for Respondent No. 3 also objected to the statement in the return filed by Respondent Nos. 1, 2 and 4 which shows that it was a return filed by Respondent Nos. 1, 2, 3 and 4. But according to learned Counsel for the Respondent No. 3, the 3rd Respondent never joined the other Respondents in filing the return but in fact she has filed a separate return.

In the separate return filed by Respondent No. 3 the main contention advanced is that the rules quoted by the Petitioner are not relevant whereas it has been asserted that Rule 11 provides that in matters for which no provision is made in these rules the Commission may regulate its proceedings in such manner as it thinks fit. It is also contended that it is nowhere provided that all the members of the Commission should be present at the time of each interview, although the fact that Respondent No. 1 alone sat during the interview of Respondent No. 3 is not disputed. This Respondent also in her return contended that Rule 11 relied upon by her permitted delegation of functions by the Commission to one or more of its members and therefore, she contends that delegation should be assumed although she asserted that she is not in know of it as it is not possible to know. As regards the qualifications she asserted that she has the requisite qualifications. She also denied her acquaintance or close association with Respondent No. 1. Apart from it, this Respondent also asserted that the Petitioner has made various allegations of fact which could only be made after having a probe into the affairs of the Public Service Commission. However, that is not so material for determination of the questions raised in this petition.

Before this petition came up for actual hearing Respondent No. 1 had neither filed a separate return nor filed an affidavit and it is unfortunate that in the petition allegations are made against Respondent No. 1 who is the Chairman of the State Public Service Commission; it is equally unfortunate that till the petition came up for hearing no affidavit denying the allegations also was filed by Respondent No. 1. It is also interesting to note that the fact, that the Chairman of the Public Service Commission was the only member of the Commission sitting in the interview for the post for which the Petitioner and Respondent No. 3 were candidates was alleged but upto the date of hearing nothing else was stated on behalf of the Public Service Commission excepting the fact that as other Members were busy with other interviews Respondent No. 1 Chairman conducted the interview for the present post. It was not the case of the Public Service Commission that by some mutual arrangement or delegation of powers Respondent No. 1 alone was authorised by the Public Service Commission to conduct the interviews for the post in question. But after the arguments of the Petitioner were over, learned Government Advocate, probably realising the need for an affidavit by the Chairman and further clarification by the Commission sought time and ultimately filed an application. By this application permission was sought for amending the return by adding a paragraph which shows that the Chairman of the Public Service Commission on 26th June 1976 passed an order saying that for the interview in respect of the post of Deputy Director (Women's Welfare) Panchayat and Community Development, the Chairman shall sit while for the post of Lecturers in Biochemistry and Pharmacy the two other members will sit for the interview. On behalf of the Petitioner a reply has been filed contending that this amendment should not be allowed whereas Respondent No. 3 contended that the amendment in the interest of justice must be allowed. In the circumstances of the case, in our opinion, this plea raised by Respondents 1, 2 and 4 also can be considered as on facts this is not challenged and what is stated is that the Chairman by his own order appointed two Boards to sit for interviews and in one he himself sat, which was for the interview in respect of the post for which Respondent No. 3 and the Petitioner were candidates.

With the affidavit of Respondent No. 1 now on record it is clear that the allegations against Respondent No. 1 made by the Petitioner have been denied on oath and in our opinion therefore it is not necessary for us to go into that question. The only questions which ultimately survive and on which learned Counsel for the parties made their submissions are:

- (a) Whether the selection done by Respondent No. 1 alone could be said to be a selection by the Public Service Commission?
- (b) As the two other members signed the selection list by noting "Seen", could it be said that ultimately the selection was approved by all the members of the Public Service Commission?
- (c) If the selection of Respondent No. 3 is not by the Public Service Commission, whether the appointment made in pursuance of this selection in view of Madhya

Pradesh Public Service Commission (Limitation of Functions) Regulations, 1957 and in view of Article 320 of the Constitution could be said to be a valid appointment?

Learned Counsel for the Petitioner contended that under Article 320 of the Constitution, the consultation is to be with the Public Service Commission and Public Service Commission means the Public Service Commission constituted under the scheme of the Constitution for the State; and as the selection in the present case was done by the Chairman of the Commission it could not be said that the selection was by Public Service Commission. It was also contended that although it is alleged that the Chairman had ordered the constitution of Boards for conducting different interviews, but it is not the case of the Public Service Commission that the Commission as such delegated the functions to one of the Members to discharge the duties of the Commission in interviewing and selecting candidates for the post in question. It was further contended that although it has now been stated that the selection was approved by the two other members, but the documents produced go to show that the two other members signed the papers after writing "Seen" which only means that they noted it for information and not for approval. Apart from it, it is not in dispute that before the signatures of the two other members were obtained the selection was notified by the Chairman himself. Thus, according to learned Counsel, even considering the return and the amendment sought during the course of arguments, still the fact remains that the selection was done by the Chairman sitting alone and while doing so powers were not delegated to him by the Public Service Commission nor did the Commission ultimately approve the selection. Therefore, according to learned Counsel, the selection is not made by the Public Service Commission as contemplated under Article 320 of the Constitution and Rule 7 of the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961.

It was also contended by learned Counsel for the Petitioner that in view of the rules referred to above it could not be said that the selection by the Public Service Commission was essential before the appointment even if it is accepted that the provisions contained in Article 320 of the Constitution are directory and not mandatory; but according to learned Counsel the State Government itself has appointed Respondent No. 3 not in disregard of the advice given by the Public Service Commission but in fact in pursuance of and accepting the advice of the Public Service Commission as is clear from the order Annexure R-4 dated 9th July 1976 produced by the Respondents 1, 2 and 4 and also by Respondent No. 3 along with her return. It was, therefore, contended that the State Government made this appointment treating the selections of Respondent No. 3 to be a selection by the Public Service Commission and if the selection is not by the Public Service Commission the appointment could not be said to be valid. He therefore contended that this appointment cannot be maintained as valid.

It was also contended that the petition filed by the Petitioner under Article 226 of the Constitution will clearly be maintainable under Article 226(1) Sub-clauses (a)

and (b) as it has resulted in injury to the Petitioner on account of non-compliance with the provisions of Rule 7 of the M.P. Civil Service (General Conditions of Service) Rules, 1961 and Article 320 of the Constitution. Learned Counsel for the Petitioner placed reliance in support on his contentions on the decisions reported in Hari Mohan Gupta v. State of Rajasthan 1976 SLR 582, Chandramohan v. State of U.P. AIR 1966 SC 1987 and State of U.P. Vs. Manbodhan Lal Srivastava,

Learned Government Advocate appearing for Respondents 1, 2 and 4 contended that looking to the additional papers filed along with the permission to amend the return it is clear that it was the Chairman who constituted the different Boards for conducting the interviews. He therefore contended that it is not necessary to go into the question as to whether powers were delegated to the Chairman by the Commission as such or not as according to learned Counsel the consultation with the Public Service Commission in view of Article 320 of the Constitution is merely directory and not mandatory. Learned Counsel placed reliance on the decisions reported in State of U.P. v. Manbodhanlal (supra) and Devajit Chaliha v. Harendranath AIR 1971 Assa 136. As regards the allegations made against Respondent No. 1 learned Counsel contended that in view of the affidavit filed by Respondent No. 1 they could not now be gone into.

Learned Counsel appearing for Respondent No. 3 vehemently contended that the Public Service Commission is a body constituted under the Constitution itself and therefore, this Court cannot look into the internal working of the Public Service Commission. As the order of the State Government discloses that Respondent No. 3 was appointed being selected by the Public Service Commission, it is enough and it could not now be considered as to whether in fact Respondent No. 3 was selected by the Public Service Commission as a whole or by one member only. According to learned Counsel the matter of internal arrangement between the members of the Public Service Commission cannot be gone into. Learned Counsel placed reliance on the decisions reported in D. Nada Gowda v. The State of Mysore AIR 1966 Mys. 220, State of U.P. v. Manbodhanlal (supra); Laxman Hirway Vs. State of Madhya Bharat, and Tuhiram Sharma v. Prithvisingh AIR 1971 P&H 267.

Learned Counsel for the Petitioner contended that there is no question of looking into the internal arrangement between the members of the Public Service Commission. The material placed by the Public Service Commission itself discloses that the selection has not been done by the Public Service Commission as such. It has been done only by the Chairman alone without the powers being delegated to him and the selection not having been approved by the Public Service Commission on the face of the facts placed by the Public Service Commission itself it could not be contended that the selection should be considered to be a selection by the Public Service Commission. As regards consultation being directory, learned Counsel contended that in absence of rules it is no doubt true that their Lordships of the Supreme Court held that provisions contained in Article 320 of the Constitution are directory. But in that decision

itself their Lordships clearly observed that where rules are framed they have to be followed; and in view of this and in view of the fact that in the present case the Government itself acted on the recommendation of the Public Service Commission, treating it to be a recommendation of the Public Service Commission, the question of Article 320 of the Constitution being directory or mandatory is of no consequence. Learned Counsel therefore contended that the appointment of Respondent No. 3 cannot be maintained as legal and valid appointment.

The facts that clearly emerge are that the Chairman Respondent No. 1 sat alone at the interview for the post in dispute. The additional document filed along with the application for amendment of the return shows that the Secretary of the Public Service Commission submitted a note to the Chairman saying that interviews will commence from 28th June 1976 onwards. He therefore, prayed that necessary orders may kindly be passed for the constitution of the Board in respect of the posts for which interviews have been fixed. On this note of the Secretary the Chairman passed the following order:

28 and 29.6.76.

For Dy. Director Women's Welfare, Panchayat and C.D. Department.

Chairman

For Lecturers Bio-chemistry and Pharmacy,

Ms. I and II (ShriLal and ShriSiddiqui.

This clearly goes to show that the Chairman alone sat for the interview on 28th and 29th June 1976 for the post of Deputy Director, Women's Welfare. Panchayat and Community Development and this he did under orders passed by himself and without any delegation of powers by (he Commission as a whole. It is also not the case set up in the return filed by the Public Service Commission or by the State that the Public Service Commission by any rule or regulation had authorised the Chairman to constitute various Boards: nor is it the case that he sat at the interview under the delegated functions, delegated to him by the Public Service Commission.

The Petitioner has filed the copy of the notice put up on the notice board of the Public Service Commission which shows that this notice was put up on 29th June 1976 and it showed Respondent No. 3 at serial No. 1 in the merit list whereas the Petitioner at serial No. 1 in the reserve list. Respondents 1, 2 and 4 have also submitted a document Annexure R-7 to contend that this selection was approved by the other members of the Public Service Commission also. This document R-7 indicates that Respondent No. 3 was put up at serial No. 1 in the merit list and Petitioner was put at serial No. 1 in the reserve list. It is signed by the Chairman on 29th June 1976. The two members have signed this by putting an endorsement "Seen" and Shri. Rambiharilal's signature bears the date "30/6" whereas Shri O.R. Siddiqui's signature bears the date "29/6". It could not be

doubted that this document does not indicate that the two members approved of the selection of Respondent No. 3 before it was announced and these two members have not signed by way of approval but have only signed by saying "Seen" which clearly goes to show that it was sent to them for information and that is why one of the members has signed it a day after the selection was notified on the notice-board. This therefore also clearly establishes that it is not a case where the selection done by one member was approved by the other members also but it only indicates that the selection of Respondent No. 3, was intimated to the other two members of the Public Service Commission and they have signed it only as having received the information. This therefore clearly establishes (a) that the Chairman sat alone to conduct the interview for the post for which the Petitioner and Respondent No. 3 were candidates; (b) that he did so under his own orders without any powers being delegated to him for that purpose; (c) that he conducted these interviews sitting as a Chairman-Member and not exercising any functions delegated to him by the Commission; and (d) that this selection done by the Chairman has not been approved by the rest of the members of the Public Service Commission.

Part XIV, Chapter II of the Constitution provides for the establishment of the Public Service Commissions for the Union and for the States. Article 315 contemplates a Public Service Commission for the Union and a Public Service Commission for each State. Article 320 Clause (3) provides for consultation and reads:

320. (3). The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted--

(a) On all matters relating to methods of recruitment to civil services and for civil posts:

(b) On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the consolidated fund of India or as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a

State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them.

Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

This clause clearly talks of a State Public Service Commission as the body which should be consulted in matters enumerated in Sub-clauses (a) to (e) of Clause (3) of Article 320 of the Constitution.

Rule 7 of the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961 provides--

7. Candidates shall be selected for appointment to a service or post by one or more of the following methods as may be prescribed, namely:

(i) direct recruitment;

(ii) promotion,

(iii) transfer of person or persons already employed in another service or post; provided that the Commission shall be consulted before a person is appointed to a service or post if such consultation is necessary under Article 320 of the Constitution read with the Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations, 1957.

The proviso to this rule indicates that the Commission shall be consulted before a person is appointed to a service or post if the consultation is necessary under Article 320 of the Constitution; that means if the appointment to the post is indicated under Article 320 then the Commission shall be consulted before the appointment is made. This proviso, however, talks of Article 320 read with the Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations, 1957 and these Regulations provide for those cases in which consultation is not necessary. Sections 3 and 5 of these Regulations talk of those exceptions when the consultation is not necessary. A reading of the provisions contained in Section 5, Clauses (1) and (2) will indicate that in all other cases which are not covered by these two sections direct recruitment could only be made in consultation with the Public Service Commission:

5. (1) It shall not be necessary for the Commission to be consulted on the suitability of a person for appointment, promotion or transfer to a post, the period of which does not exceed six months,

(2) In other cases where appointment, promotion or transfer to a service or post would otherwise require consultation with the Commission, it shall not be necessary to consult the Commission, if owing to an emergency the Commission cannot be consulted without detriment to Public Service:

Provided that--

(i) intimation of such appointment, promotion or transfer shall be sent to the Commission at the same time; and

(ii) action to fill up the post in the normal way or to obtain the concurrence of the Commission, as the case may be, shall be initiated as early as possible.

It, therefore, clearly emerges that appointment of Respondent No. 3 to the present post could not be made except in consultation with the Public Service Commission.

Article 320 of the Constitution talks of State Public Service Commission and the word "Commission" has been defined in the Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations, 1957 as--

2. (a) the Commission means the Public Service Commission, Madhya Pradesh." Similarly, in Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961 also "Commission" has been defined as--

(b) "Commission" means the Madhya Pradesh Public Service Commission;

Thus looking to all these definitions of the word "Commission" in the Constitution and in the Rules it is clear that when consultation with the Public Service Commission is expected it has to be with the Madhya Pradesh Public Service Commission and not with any one of the Members thereof.

Learned Counsel for the Petitioner referred to a decision of the Rajasthan High Court reported in *Anandilal Verma v. State of Rajasthan* 1975 SLR 49, wherein a Division Bench of that Court considered the question in the context of the term "High Court" and held that "'High Court" means the Full Court and not only the Chief Justice. Similarly, in *Chandra Mohan v. State of U.P.* (supra) their Lordships of the Supreme Court observed:

The learned Attorney General argued that the High Court can under the Rules, refuse to recommend any of the names found in the list and go on doing so every time a new list is sent to it till the names if finds suitable are found in the list. This suggestion of obstructive tactics on the part of the High Court to achieve its objective may indicate a loophole in the Rules but it clearly demonstrates that the Rules are intended to tie down the hands of the High Court in the matter of consultation. Apart from the fact that a High Court cannot be expected to resort to such obstructive tactics, the Governor can easily prevent such a situation, as he may appoint persons recommended by the Selection Committee on the ground that the refusal by the High Court to send their names complied with the constitutional requirement of consultation. While the

constitutional provisions say that the Governor can appoint District Judges from the service in consultation with the High Court, these rules say that the Governor can appoint in consultation with the Selection Committee subject to a kind of veto by the High Court which can be accepted or ignored by the Governor.

The position in the case of District Judges recruited directly from the Bar is worse. Under Article 233(2) of the Constitution, the Governor can only appoint advocates recommended by the High Court to the said service. But under the Rules, the High Court can either endorse the recommendations of the Committee or create a deadlock. The relevant rules, therefore, clearly contravene the constitutional mandates of Article 233(1) and (2) of the Constitution and are, therefore, illegal.

It, therefore, could not be disputed that where the Public Service Commission is to be consulted it only means the Commission as understood within the scheme of our Constitution and defined in the Rules referred to above has to be consulted and consultation with one member--the Chairman alone, who out of the members of the Public Service Commission was the only member present at the time of selection of Respondent No. 3, could not be said to be consultation with the Public Service Commission.

Learned Counsel for the Respondents contended that consultation is not mandatory but directory and they placed reliance on the decision reported in *State of U.P. v. Manbodhanlal* (supra). In this decision it was observed:

Article 320 does not come under Chapter I headed "Services" of part XIV. It occurs in Chapter II of that part headed "Public Service Commissions". Articles 320 and 323 lay down the several duties of a Public Service Commission. Article 321 envisages such "additional functions" as may be provided for by Parliament or a State Legislature. Articles 320 and 323 begin with the words--"It shall be the duty..." and then proceed to prescribe the various duties and functions of the Union or a State Public Service Commission, such as to conduct examinations for appointments; to assist in framing and operating schemes of joint recruitment; and of being consulted on all matters relating to methods of recruitment or principles in making appointments to civil services and on all disciplinary matters affecting a civil servant.

Perhaps because of the use of the word "shall" in several parts of Article 320, the High Court was led to assume that the provisions of Article 320(3)(c) were mandatory, but in our opinion, there are several cogent reasons for holding to the contrary. In the first place, the proviso to Article 320, itself, contemplates that the President or the Governor, as the case may be "may make regulations specifying the matters in which either generally or in any particular class of case or in particular circumstances it shall not be necessary for a Public Service Commission to be consulted.

The words quoted above give a clear indication of the intention of the Constitution makers that they did envisage certain cases or classes of cases in

which the commission need not be consulted. If the provisions of Article 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary.

If it had been intended by the makers of the Constitution that consultation with the Commission should be mandatory, the proviso would not have been there or, at any rate in;the terms in which it stands. That does not amount to saying that it is open to the Executive Government, completely to ignore the existence of the commission or to pick and choose cases in which it may or may not be consulted.

Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specifically provided for, in order, first to given an assurance to the services that a wholly independent body not directly concerned, with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and secondly, to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public services.

It is, therefore, incumbent upon the Executive Government, when it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation.

Secondly, it is clear that the requirement of the consultation with the Commission does not extend to making the advice of the Commission on those matters, binding on the Government. Of course, the Government, when it consults the Commission on matters like these, does it not by way of a mere formality but with a view to getting proper assistance in assessing the guilt or otherwise of the person proceeded against and of the suitability and adequacy of the penalty proposed to be imposed.

If the opinion of the Commission were binding on the Government, it may have been argued with greater force that non-compliance with the rule for consultation would have been fatal to the validity of the order proposed to be passed against a public servant. In the absence of such a binding character, it is difficult to see how non-compliance with the provisions of Article 320(3)(c) could have the effect of nullifying the final order passed by the Government.

It is clear that in this decision their Lordships although held that the provisions contained in Article 320 are directory and not mandatory, but still, their Lordships observed that it does not amount to saying that it is open to the executive Government completely to ignore the existence of the Commission and further their Lordships observed that once relevant regulations have been made they are meant to be followed in letter and in spirit. It cannot be doubted from the regulations and rules quoted above that regulations have been made which

go to indicate that appointment by direct recruitment could only be made in consultation with the Public Service Commission. It therefore cannot be contended that this consultation was not necessary.

Apart from it, in the instant case, the order of appointment issued in favour of the Respondent No. 3 goes to show that the Government in appointing Respondent No. 3 has chosen to accept the advice of the Public Service Commission as the first sentence of the order reads:

It, therefore, in the facts of this case, is mere academic argument to contend that consultation with the Public Service Commission was not mandatory. In fact, the Respondent No. 3 was appointed because the Government accepted this recommendation treating it to be a recommendation of the Public Service Commission. It is not even the case set up in the return by the State Government that the State Government did not make this appointment in consultation with the Public Service Commission as it was not mandatory but made the appointment in consultation with any one else, may be, the Chairman of the Public Service Commission assisted by some other heads of departments and experts.

Learned Counsel for the Respondents placed reliance on the decisions reported in *Laxman Hirway v. State of Madhya Bharat* (supra); *D. Nada Gowda v. State of Mysore* (supra); and *Tuhiram Sharma v. Prithvisingh* (supra). In *Laxman Hirway v. State of Madhya Bharat*, the question before the Court was as to whether in matters of removal of a civil servant the opinion of the Public Service Commission was binding and the Government could not depart from the opinion given by the Public Service Commission; and in that context it was held that the opinion of the Public Service Commission is only an advice and as consultation is only directory it could not be contended that Government could not depart from the opinion expressed by the Public Service Commission. In the *Mysore* case again the question was about removal of a civil servant from office and it was contended that it could not be done without following the procedure prescribed under Article 320(3)(c) and in that context it was observed, reliance being placed on the decision reported in *State of U.P. v. Manbodhanlal* (supra), that consultation with the Public Service Commission is only directory and non-compliance will not nullify the order passed by the Government. In the *Punjab* decision referred to above their Lordships held that in matters of promotion from subordinate agricultural service as District Agricultural Officer, non-compliance with the requirement of consultation with the Public Service Commission will not affect the validity of the appointment because consultation is not mandatory but it is only directory. Apparently therefore, all these cases on which reliance has been placed by learned Counsel for the Respondents that consultation with the Public Service Commission is not mandatory but only directory are cases where the Government in its wisdom chose not to consult the Public Service Commission. But as has already been stated, in the present case it is not that the Government had not consulted or has rejected the recommendation of the

Commission, but has consulted and accepted the advice given by the Chairman and it was only on that recommendation that the Government acted in appointing Respondent No. 3. Therefore, the question whether the Government should have accepted the recommendation of the Public Service Commission or not is a mere academic question. The real question that arises is as to whether what the Government accepted as the recommendation of the Public Service Commission was in fact the recommendation of the Public Service Commission or not.

In this connection learned Counsel for the Petitioner placed reliance on the decision of the Rajasthan High Court reported in *K.K. Bhatia v. Rajasthan Public Service Commission* 1972 RLW 22. In that case Shinghal J. observed:

A reference to Article 320 of the Constitution shows that this argument of Mr. Daphtary is quite correct. That article specifies two important functions of a State Public Service Commission as follows--

- (1) to conduct examinations for appointments to the services of the State, and
- (2) to be consulted on the matters specified in Clause (3).

Each of these is a distinct function, so that the provisions of Clause (3) of Article 320 making it obligatory that the Commission shall be consulted on the matters enumerated in it cannot be rested for interpreting clause (1) thereof. It follows therefore that in discharging its duty of conducting an examination for the selection of candidates for appointment as Assistant Engineers in Rajasthan Ground Water Board Service, the Commission was required to discharge a duty which was quite different from what it was required to do while answering a reference on consultation under Clause (3). It appears to me, therefore, that it was permissible for the Commission to discharge the duty of conducting the examination by entrusting it to one or more of its members and that it was not necessary for it to act in a body. In fact my attention has not been invited to any general or special requirement of any law under which it could be said that it was necessary for the entire Commission to constitute itself into a board of examiners for the purpose of selecting for appointment to a service of which the rules made a provision that the candidates shall appear before the Commission for interview. It follows therefore, that it was permissible for the Commission to nominate the examiners from amongst themselves and to conduct the examination in that manner. In such a case it would be futile to contend that the examination would be illegal merely because all the members of the Commission did not choose to examine the candidates. It would not, therefore, matter if the test of examining the candidates was assigned to one or more members of the Commission, and the examination would not be illegal if the other members were not directly associated with it.

It, therefore, is clear that if the Commission had chosen to delegate its functions to one of its members and subsequently endorsed the decision of that member by approval, it could not be said that consultation was not with the Public Service

Commission. But in the present case, as stated above, the Commission did not delegate the functions to the Chairman nor did the Commission approve the selection.

Reliance was also placed by learned Counsel for the Respondents on the decision of the Full Bench of the Assam High Court reported in *Devajit Chaliha v. Harendranath* (supra). In this decision their Lordships observed:

The constitution of the Commission as such has not been challenged by the learned Counsel and indeed it cannot be challenged in view of the submission of the learned Counsel that our earlier decision (A.C. Sarkar's case)... does not require any reconsideration and on the basis of which he seeks to make out a case. Further, the Petitioner does not deny that the nomination of the Respondent No. 1 was made by the Commission. His whole objection as can be seen from paragraph 28 of his application is that the Commission made recommendation pursuant to the aforesaid illegal interview dated 29-1-1969 for its acceptance by the Government of Assam. This objection is devoid of substance. Mr. Lahiri submits that in A.C. Sarkar's case the Commission was manned by the Chairman and another Member, but the vacancy on the retirement of the third member was not filled up. Since, however, under the Regulation then in force, the minimum number was two, namely the Chairman and another member, the interview conducted by two members was unexceptionable. The learned Counsel submits that in the instant case, the interview, being conducted by the Chairman and another member when the minimum number under the amended Regulation is three is absolutely invalid and without jurisdiction. This argument however does not bear scrutiny when we take into consideration Article 316(1A) and 317(2) of the Constitution. Omitting the portion that is not necessary for our purpose, Articles 316(1A) and 317(2) read as follows:

If the office of the Chairman of the Commission becomes vacant or if any Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under Clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission... and the Governor of the State in the case of a State Commission, may appoint for the purpose. Article 317(2):

..the Governor, in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under Clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference. The above are the contingencies in which the Chairman of the Commission may become unavailable. The Commission shall be continued to function with the remaining members, one of whom will be appointed by the Governor to exercise the functions of the Chairman under Article 316(1A) during the period. The Commission does not come to an end the moment the Chairman

becomes unavailable. This would go to show that the Commission can function and carry out its various duties even though there may be a vacancy on a certain member or members becoming unavailable either permanently or temporarily. It is understandable that sometime although not inordinately long time, may be taken by the Governor in filling up the vacancies. Besides, conducting of an interview for recommending certain candidates for appointment on the ground of suitability, need not require the presence of all the members of the Commission. Any one or two members may be entrusted with the duty in absence of any rules to the contrary. This is an internal working of the Commission which is a highly responsible body and can be trusted to discharge their duties with due regard to high propriety and fairness to all concerned. We are, therefore, clearly of opinion that the interview conducted by the Chairman and another member in the case of the Petitioner is not without jurisdiction, nor is the recommendation as a result of that interview can be said to be invalid under the law. We have not been shown any rules which debar the Commission to work in compartments while interviewing candidates for appointment.

The observations made in this paragraph quoted above clearly go to show that what their Lordships felt was that if one or two members of the Commission were entrusted with the duty of interviewing the candidates in absence of the rules to the contrary it would be permissible. In fact, that is not the stand taken by the Public Service Commission or the State Government in the present case and it is also not the case where we do not know how the Chairman alone conducted the interview as it was in the Assam case and their Lordships observed--

This is an internal working of the Commission which is a highly responsible body and can be trusted to discharge their duties with due regard to high propriety and fairness to all concerned.

These observations were made by their Lordships on an assumption, as is clear from the observations quoted above, that one or two members may be entrusted with the duty by the Commission. But in the present case there is nothing left for us to inter as the positive case set out by the Public Service Commission itself in their return and the amendment to the return is that it was not the Commission which entrusted the duty to conduct these interviews to the Chairman but it was the Chairman himself who took upon himself to conduct the interviews for the post in question. Under these circumstances, therefore, this decision in the Assam case also is of no assistance.

It is, therefore, clear that the selection of Respondent No. 3 made by the Chairman, the only member of the Commission sitting at the interview, was not a selection done by the Public Service Commission of Madhya Pradesh. And it was on this selection that the State Government has chosen to base the order of appointment. It is, therefore, clear that the State Government has made the appointment in contravention of the provisions contained in Article 320(3) of the Constitution and Rule 7 of the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961 and also in contravention of Rule 5 of M.P. Public Service

Commission (Limitation of Functions) Regulations, 1957.

It could not be disputed that by selection of Respondent No. 3, the Petitioner who was working on the post in consequence of the earlier decision of this Court was reverted and therefore, it resulted in substantial injury to the Petitioner. Consequently, the petition squarely falls within the ambit of Article 226(1)(a) and (b) of the Constitution.

In the light of the discussion above, therefore, the petition is allowed. The order passed by the State Government (Annexure R-IV dated 9th July 1976) appointing Respondent No. 3 as Deputy Director (Women's Welfare) Applied Nutrition Programme is hereby quashed. In consequence the order (Annexure R-Y) dated 9th July 1976 also is quashed and it is directed that the operative part of the judgment in Misc. Petition No. 684 of 1973 dated 6-2-1975 shall remain operative till a fresh selection for the post of Deputy Director (Women's Welfare) Applied Nutrition Programme is made. In the circumstances of the case parties are directed to bear their own costs.