

(1995) 07 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : CWP No"s. 179 and 181 of 1995

Asha Thakur

APPELLANT

Vs

H.P. Public Service Commission and Others
 Kaushalya
Kalta Vs State of H.P. and Others

RESPONDENT

Date of Decision : 27-07-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 12, 14, 14(1), 14(3), 15
Bar Council of India Rules, 1975 — Rule 1(1)
Constitution of India, 1950 — Article 136, 14, 16, 162, 19

Citation : (1995) 3 ILR HP 1789

Hon'ble Judges : S.N. Phukan, C.J;Kamlesh Sharma, J;Bhawani Singha, J

Bench : Full Bench

Advocate : Kuldip Singh, in CWP No. 179 of 1995, Shrawan Dogra, in CWP Nos. 181 and 395 of 1995, Rajiv Sharma, in CWP. Nos. 182 and 202, Shubh Mahajan, in CWP No. 193 of 1995, M.A. Khan, in CWP No. 201 of 1995, Prem Goel, in CWP No. 210 of 1995 and Sanjay Dutt Vasudeva, in CWP No. 394 of 1995, for the Appellant; Inder Singh, General, P.A. Sharma, D.K. Khanna and D.C. Jisthu, in CWP Nos. 179, 181, 182, 193, 201, 202, 210 and 394 of 1995 and C.G.S. Counsel in CWP No. 179 of 1995, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singha, J.—This batch of nine writ petitions is proposed to be decided by a common Judgment since the questions involved for determination in all of them are almost common. However, before advertng to decide these questions, it would be necessary to record essential facts from each case.

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2. The Petitioner is aggrieved by letter No. KA(S)-4/92-Edu-Ka, dated April 8, 1994 of the Commissioner-cum-Secretary (Edu.) to the Government of Himachal Pradesh read with minutes of the Equivallance Committee dated March 11, 1994. The Petitioner was issued roll number slip dated February 28,1995 by Respondent-1 mentioning that the candidates who had passed B.Ed. through

Correspondence Courses from any University, were not eligible according to the H.P. Government (Edu. Deptt.) letter No. KA(s)-4/92-Edu.-Ka, dated April 8, 1994. The Petitioner passed Matriculation Examination in 1976 from Government High School, Narag (Annexure P-1). She passed her B.A. Examination in April, 1987 from H.P. University (Annexure P-3). Maharishi Dayanand University, Rohtak (hereafter "M.D. University") started Bachelor of Education (B.Ed.) programme by correspondence from 1988-89 keeping in view the spirit of open University and national policy of education laying emphasis on continuing education and distant education, admission is open to candidates from all over the country to those who may otherwise fail to enter colleges of education as regular students for various reasons. The duration of the course is for one year, and the programme for study is identical with regular students. The Petitioner availed this facility and qualified the course in April, 1990 and got degree in Bachelor of Education (Annexure P-4).

3. On the basis of her B.Ed. degree, she enrolled herself with the Employment Exchange, Rajgarh, District Sirmour. During 1993-94, certain posts of B.Ed. teachers were to be filled in by Respondent-2 through Respondent-1. The Petitioner was called for test by Respondent-1 but she could not qualify it.

4. Equivalence Committee held its meeting on March 11, 1994 and decided that B.Ed. (Correspondence) degree of M.D. University would not be recognised for employment under the State Government. The proceedings of the Equivalence Committee were circulated vide letter No. KA(3)-4/92-Edu.-Ka, dated April 8, 1994 (Annexure P-6). Respondent-1 issued Roll Number provisionally on February 28, 1995 to the Petitioner admitting her to the screening test that was to be held on April 2, 1995 at 11.00 a.m. (Annexure P-7). In this roll number slip a note mentioned above has been recorded. Consequently, the Petitioner apprehended that she would not be permitted to appear in the screening test on April 2, 1994.

5. Aggrieved by the letter dated April 8, 1994 (Annexure P-6), decision of Equivalence Committee dated March 11, 1994 and note given in communication of Respondent-1 (Annexure P-7), the Petitioner submits that M.D. University Rohtak has been created by a statute, the degrees, diplomas and certificates issued by this University are to be accepted ipso facto throughout the country for the purposes of employment. The Respondents could not de-recognise the degree for the purposes of employment, therefore, decision of the Equivalence Committee is wrong, illegal and arbitrary. The syllabus, programme of B.Ed. correspondence of M.D. University is identical to that of regular students. The contact programme which imparts practical training, fulfils all the requirements of a course and places them at par with other regular students. Till this decision was taken, students like the Petitioner were always eligible like the regular students for entering employment under the State. The reasons recorded by the Equivalence Committee in its decision of March 11, 1994 are arbitrary. Simply because there is no entrance test for admission in B.Ed. Correspondence Course,

that does not effect the standard of education imparted through this system. Imparting of legal education through correspondence course is based on national policy for education providing for distant education through correspondence to enable students to improve their educational qualifications from their places. It facilitates students from economically disadvantaged classes to undertake their enlistment by improving their education which they cannot otherwise do by joining the University as regular students. The decision of Equivalence Committee is not in accordance with Chapter VII of the Hand Book of the department. As a matter of fact, no order has been passed on the basis of Equivalence Committee decision dated March 11, 1994, therefore, in the absence of proper order from the competent authority, eliminating the Petitioner from the competition is thoroughly unjustified. The Petitioner further states that the Central Government has not disqualified persons obtaining B.Ed. degree through correspondence course from M.D. University. Till this decision was taken, person's obtaining B.Ed, degree through correspondence course from M.D. University were eligible for employment under the State Government also. Before the decision of the Equivalence Committee was set in motion, consultation with Respondent-1 was not undertaken, on this basis also it had no binding force.

6. The Petitioner undertook the Course under the bona fide belief that she would be in a position to seek employment under the State Government on the basis of B.Ed. degree from M.D. University like other persons who had been appointed by the State Government on the basis of this degree, however, all of a sudden, Respondent-2 took the decision debarring from consideration the persons who passed B.Ed. Course from M.D. University through correspondence course. Therefore, this decision cannot be given retrospective effect, in case it is found that the decision of the State Government de-recognising this degree for employment under the State is correct. While joining the Course, she had legitimate expectation of securing employment after obtaining this degree from M.D. University.

7. Respondent-2 has filed reply in this case. It has been stated that the State Government is competent to decide recognition of degree awarded by University, therefore, order (Annexure P-6) has been issued. The degrees, diplomas and certificates issued by the Universities, do not become ipso facto recognised. Decision for recognition has to be taken by the State Government for the purpose of employment. B.Ed. degree obtained through correspondence course from M.D. University, Rohtak has not been recognised by the State Government for the purpose of employment. The standard of the degree awarded by the University has to be taken into consideration before recognising it sufficient for the purpose of employment. The Equivalence Committee recorded reasons for its decision and they cannot be called arbitrary. This Course undertaken through correspondence is not equivalent to the Course studied through regular attendance in the Himachal Pradesh University. Constitution of the Equivalence Committee was necessitated by the observations of this Court in C.W.P. No. 177 of 1992 Govinder Singh v. State of Himachal Pradesh (Annexure R-4. The cases

for recognition of professional/technical qualifications are processed for final order by Education Department which consults the departments dealing with technical profession or departments where the incumbents holding degrees and diplomas are likely to be appointed. Recognition of a degree is the subject of State Government and the decision of the Central Government is not binding upon the State Government. Chapter-VII of the Hand Book does not ipso facto declare the recognition of degree. It was not obligatory, in the facts and circumstances of this case, to consult Respondent-1.

8. Respondent-1 has placed affidavit on file explaining the circumstances how the note referred to above came in the call-letters issued to the candidates but was not available in the notifications to the Employment Exchanges. It has been stated that on receipt of a request from the Director of Education, H.P. to fill up 99 posts of Graduate Teachers (Arts), names of all eligible candidates were invited from the Employment Exchanges/Sub-Employment Exchanges of Himachal Pradesh. A copy of the notification was also endorsed to all the Heads &f Department in Himachal Pradesh to send the applications of all the desirous, eligible candidates having B.A. (with English as one of the subjects) with B.Ed./B.T. from recognised University. The Employment Exchanges do not maintain any record whether B.Ed. degree had been obtained through regular or through correspondence course. The Commission had, therefore, to put a note in the call-letters issued to the candidates. Copy of the Government letter dated April 8, 1994 filed with the petition is not a complete copy. Complete copy is like Annexure-RX. Under the list of Universities whose B.Ed. degree has been considered equivalent to B.Ed. degree of H.P. University on reciprocal basis vide letter No. 3-34/92-HPU (Acad.), dated July 25, 1992, a note to the following effect has been recorded:

The B.Ed. through Correspondence run by various Universities in the country is not recognised as equivalent to B.Ed.(Regular) Degree of Himachal Pradesh University as per decision taken by the equivalence committee in its meeting held on 13.5.1992 item No. 7.

The Commission had added the note in the call-letters to the candidates on the basis of this foot-note.

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9. The Petitioner passed her B.A. Examination from Himachal Pradesh University during Session of 1988-89. She did B.Ed. course through correspondence from M.D. University and passed the same in October, 1992 (Annexure P-1). On the basis of her qualifications, Himachal Pradesh Public Service Commission (Respondent-3) issued letter dated March 18, 1994 (Annexure P-3) calling upon the Petitioner to appear in the screening test on April 10, 1994. The essential qualifications required for the post of Trained Graduate Teacher (Arts) in this letter are B.A. (with English as one of the subjects) with B.Ed./B.T. from

recognised University. The Petitioner fulfilled this qualification and was called for screening test. She appeared on April 10, 1994 but her result was not declared nor she was given any information in this regard. Respondent-3 also held screening test for Trained Graduate Teachers (Science) on December 25, 1994. In the call-letters to the candidates, note, pointed out above in writ petition No. 179/95, was recorded. Therefore, it appears that Respondent-3 did not declare the result of the Petitioner for the reason that she obtained her B.Ed. degree through correspondence course.

10. The Petitioner approached the Himachal Pradesh State Administrative Tribunal on December 26, 1994 by filing O.A. No. 3301/94 and sought direction to the Respondents on the ground that they had no authority to de-recognise the B.Ed. degree awarded by the M.D. University through correspondence course as the said University was constituted under the Act and the degree had been recognised by the University Grant Commission which is competent to do so. The petition was not decided on merits and the same was directed to be treated as a representation to the Secretary (Education) to the Government of Himachal Pradesh to be decided on merits in accordance with law and in the light of the Judgment in Dr. B.L. Asawa Vs. State of Rajasthan and Others, within a period of four months (Annexure P-4). The Commissioner -cumsecretary (Education) to the Government of Himachal Pradesh decided the representation on February 9, 1995 rejecting the claim of the Petitioner (Annexure P-5). The Secretary (Education) has referred to two decisions dated January 13, 1994 and February 5, 1994 of the H.P. University Equivalence Committee (Annexure P-6 and P-7).

11. The Petitioner was asked to appear in the screening test on April 2, 1995 at 11.00 a.m. at Centre No. 2 by letter dated March 8, 1995 issued by Respondent-3 but with note, already mentioned above. Although this letter has been issued in her favour, yet according to this note, she would not be eligible to appear in the screening test. More so, her result of the screening test for April, 1994 had not been declared by the Respondents for the same reasons. Respondent-1 had taken up the matter with the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Government of India, New Delhi vide letter No. Edu-II-Cma (7) 3/88, dated August 27, 1991 in which reference was made to the recognition of examinations etc. issued by different Universities. In reply to this letter, Respondent-1 had been informed vide letter dated October 17, 1991 that the instructions in this respect had already been issued by the Ministry of Home Affairs by its Memorandum dated September 30, 1952 (Annexure P-9 and P-10). From the perusal of letter (Annexure P-10) it is clear that the degree/diplomas awarded by Universities in India, which are incorporated by an Act of the Centre or the State Legislature, would be recognised automatically for the purpose of employment under the Government. It was further mentioned in the said letter that no orders were required for the formal recognition of degrees and certificates or diplomas etc. Consequently, from the said letter it would be clear that all the Universities established under the Act, are recognised Universities and the degrees awarded

by them are to be recognised automatically. Himachal Pradesh University (Respondent-4) vide letter dated April 30, 1980 and November 29, 1980 had recognised the diplomas/degrees of different Universities for the purpose of admission in this University (Annexure P-11). This decision was reiterated by Respondent-4 in letter dated July 25, 1992. However, by subsequent letter of December 24, 1994, it has been decided that, for the purpose of admission to Respondent-4, the degrees/diplomas awarded by the Universities established by law in India and also recognised by the Association of Indian Universities (except B.Ed. through correspondence course) have been declared equivalent to the corresponding examination of Respondent-4 (Annexure P-12).

12. Since M.D. University has been created under the statute, the degrees awarded by it are to be recognised and treated as valid throughout the country. Such degrees are not required to be recognised separately for the purpose of employment. Respondent-4 has accepted the decision of its Equivalence Committee excluding B.Ed. degree through correspondence course for the purpose of admission in the University. Its decision has no relevance so far as employment under the State is concerned. The University Grants Commission has recognised this degree for the purposes of employment etc. and there is no reason why Respondent-4 or the State Government takes a different decision. Treatment of the Respondents with the Petitioner and other similarly placed persons having done their degree through correspondence course, is completely arbitrary. It violates Article 14 of the Constitution of India. The decision of the Secretary (Education) to the Government of Himachal Pradesh rejecting the representation of the Petitioner is based on the decisions of the Equivalence Committee of the H.P. University dated January 13, 1994 and February 5, 1994 which are wrong. There should have been independent decision of the matter without being influenced by other considerations.

13. In the aforesaid background, the Petitioner has sought direction for declaring her result of screening test held on April 10, 1994 and permitting her to appear in the interview, in case she is declared successful in the screening test. Direction has also been sought for offering her employment as Trained Graduate Teacher in case she is selected by Respondent-3. It has also been prayed that the decision of the Respondents declaring the Petitioner and similarly placed persons ineligible for employment under the State on the ground that they obtained their B.Ed. degree through correspondence course, be set aside.

14. State of Himachal Pradesh (Respondent -1) and Director of Education, H.P. (Respondent-2) have filed common affidavit in reply. It has been stated that the University Grant Commission has clarified through letter No. F.7-1/93(CPP-I), dated April 5, 1993 that it does not deal with the recognition of degrees awarded by the University for employment purposes. The State Government is competent to take decision in this regard (Annexure-RA). Consequently, the degrees awarded by the Universities do not automatically become recognised unless the State takes a decision in this regard. On other points, these Respondents have

taken the same stand which has been taken in Civil Writ Petition No. 179/95.

15. Respondent-4 has stated that it recognises the corresponding degrees of the University/Universities recognised by the University Grant Commission for the purposes of admission to the students to this University. So far as recognition of the diplomas/degrees of other Universities for the purposes of employment in services of the State Government are concerned, the replying Respondent has nothing to do with it. This University is not awarding any B.Ed. degree through correspondence as such treating of B.Ed. degree awarded by the other University(s) through correspondence as equivalent to the B.Ed. degree awarded by respondent-4 through regular teaching does not arise. Respondent-4 is not running B.Ed. classes through correspondence. The matter with regard to the recognition of B.Ed. degree through correspondence awarded by M.D.University, Rohtak and Open University, Kota for the purposes of admission to higher courses in this University was considered by the Equivalence Committee in

consonance with the provisions of Ordinance XX in meeting dated May 5, 1991 and the following decision was taken:

The Equivalence Committee decided that the B.Ed. Degree through correspondence of M.D.U., Rohtak and Kota Open University, Kota may not be recognised as equivalent to the B.Ed. degree of this University in view of the information collected from the neighbouring Universities i.e. Punjab University, Chandigarh, Punjabi University, Patiala and Kurukshetra University, Kurukshetra. Further more the Chairman, Department of Education/Convenor Board of Studies has also recommended that the Degree of B.Ed, through Correspondence from M.D.U., Rohtak and Kota Open University, Kota may not be recognised as equivalent to the B.Ed. degree of Himachal Pradesh University.

16. From the decision of Equivalence Committee, it is clear that the basis of admission to B.Ed. (Regular Course) of this University is entirely different from that of M.D. University, Rohtak. The basis of admission to B.Ed. (Regular Course) of Respondent-4 is merit (now merit determined on the basis of entrance test), whereas it is not so in M.D. University, that is why, this degree is not treated as equivalent to the degree of Respondent-4. The matter with regard to the equivalence of B.Ed. degree through correspondence awarded by Indian Universities/Institutions came for decision of the Equivalence Committee of Respondent-4 through item No. 7 in its meeting on May 13, 1992 and the following decision was taken:

The Equivalence Committee observed that the B.Ed. through correspondence run by various Universities in the country cannot be equated as equivalent to B.Ed. (Regular) degree of this University as the mode of admission, course contents, methodology of instructions and evaluation are quite different. Moreover, this University admits only Graduates with Physics, Chemistry and Mathematics subjects at their Graduation level and the admissions are done purely on the basis of merit.

17. The matter regarding equivalence of B.Ed. degree (through correspondence) of M.D. University, Rohtak came before the Equivalence Committee for consideration on July 17, 1993 and the following decision was taken:

Regarding recognition of B.Ed. degree (through correspondence) of Maharishi Dayanand University, Rohtak the Equivalence Committee reiterated its earlier decisions taken in its meeting held on 4-5-91 and 13.5.92 vide item No. 12 and 7 respectively.

18. An emergent meeting of the Equivalence Committee was again held on February 5, 1994 for considering the equivalence of B.Ed. (through correspondence) of M.D. University Rohtak to that of B.Ed. (regular stream) examination of Respondent-4. The Committee decided that:

The proposal for equivalence of the B.Ed. (through correspondence) examination of M.D. University, Rohtak was discussed thoroughly. The Committee also went through the decisions already taken earlier in their meetings held on 4.5.91, 13.5.92 and 17.7.93. After great deliberations the Committee reiterated its earlier decisions that B.Ed. (through correspondence) examination of M.D. University, Rohtak cannot be equated with B.Ed. (Regular) examination of H.P. University, Shimla because of the following reasons:

(a) That H.P. University, Shimla does not offer B.Ed. (through correspondence/ Distant mode) and as per Order 20.1 the equivalence of an examination of any board or institution or institute or deemed University or University established by law in India or a Foreign University or of any other examination with a corresponding examination of the University with or without any condition, shall be determined by the Vice-chancellor on the advice of Equivalence Committee consisting of Deans of all Faculties with the Dean of Studies as the Convener. Since, H.P. University, Shimla does not offer B.Ed. (through correspondence/ Distance Mode), the question of equating B.Ed. (through correspondence) examination of any University with the B.Ed. (regular) of this University does not arise.

(b) The mode of admission adopted by H.P. University Shimla for admitting B.Ed. students (through regular stream) is on the basis of merit determined by the Entrance Test and the admission is open for the fresh Graduates who have offered B.Sc. with Physics, Chemistry, Mathematics or B.Sc. with Medical subjects with Physics, Chemistry and Bio-Sciences. On the other hand the M.D. University, Rohtak admits students to B.Ed.(through correspondence/distance mode) without any Entrance Test and it is made on the basis of the marks obtained by them and the subjects they have offered at the graduation level with atleast 40 marks.

(c) The course content prescribed by H.P. University at the B.Ed, course is different from the followed by B.Ed. (through correspondence) of M.D. University, Rohtak. The emphasis in the courses offered by H.P. University, Shimla is on Science Education, Mathematics Education and Computer Education as per needs

of the State Govt. for recruiting teachers in the Middle and High and Higher Secondary Schools of Himachal Pradesh.

(d) The students who are admitted in B.Ed. in Himachal Pradesh University have to undergo a rigorous practical training in development of teaching skills and other related techniques for a period of about 3 months whereas in case of B.Ed. (through correspondence) of M.D. University, Rohtak there is very little emphasis to this aspect of teacher training/teaching skills.

(e) The B.Ed. students of H.P. University have also to undergo practical training in Yoga, Library Organisations, Personal Hygiene, Socially useful productive work and various innovations techniques like, team, teaching, Micro teaching etc. which is evident from the syllabus. On the other hand, there is no provision for such practicals in the syllabus of M.D. University, Rohtak for B.Ed. (through correspondence) examination.

(f) Keeping in view the recommendations of the National Education Policy 1986 and Programme of Action, circulated by the Ministry of Human Resources & Development and N.C.E.R.T., New Delhi, there is less emphasis on the thrust Areas of Teachers Training in the curriculum followed by M.D. University, Rohtak for the training of teachers through B.Ed. (correspondence courses). On the other hand, this aspect has been taken into consideration while formulating the curriculum of B.Ed. by H.P. University.

It is further clarified that the recognition/de-recognition of any Degree does not fall in the purview of the University as per Chapter XX Ord.20.1 of the Ordinance of this University. The function of the University is only to accord the equivalence of the examination of other Universities corresponding to the examination of this University.

The question of recognition of any Degree for the purpose of employment is totally different from the question of equivalence of any examination for the purpose of admission in the University. Hence, the State Govt. may take decision at its own in the light of its earlier decision taken vide letter No. 13-37/81 (Edu.)/Estt. dated 27.7.66 issued by the Secretary (Education) to the Government of Himachal Pradesh. Under Order 20.1 of the First Ordinance of this University, the equivalence of examination of any institution is determined only for the corresponding examination of this University.

Therefore, it is clear from the decision of the Equivalence Committee that Respondent-4 does not recognise B.Ed. degree through correspondence course awarded by any University/Institutions in the country as equivalent to the B.Ed. (regular) degree awarded by Respondent-4 for the purposes of admission to the next higher classes.

19. Additional affidavit dated May 3, 1995 has been filed by Respondent -2 placing on record letter dated April 16, 1994 (Annexure R-3/A and Annexure R-3/B). Respondent-3 has filed similar reply in this petition as in Writ Petition No.

179/95.

CWP. No. 182/95 Smt. Kiran Prabha v. State of H.P. and Ors.

20. The Petitioner passed her B.A. Examination from H.P. University in 1988 (Annexure-PA). She qualified B.Ed. Examination from Punjabi University in 1989 through correspondence course. Himachal Pradesh Public Service Commission (Respondent-3) issued call-letter to the Petitioner dated March 8, 1995. The Petitioner was registered with the Employment Exchange, Theog. It has been mentioned in the call-letter that her candidature was provisional for the screening test to be held on April 2, 1995. This call-letter mentions the minimum qualification and records the note, duly mentioned in other writ petitions here-in-above. It has been stated that Respondent-3 added the note in the call-letter since letter dated April 8, 1994 (Annexure-PC) refers to B.Ed. (correspondence) degree of M.D. University, Rohtak only. The Punjabi University, Patiala has been incorporated under the Punjabi University, Act, 1961. Being created under a statute, the degrees awarded by it are to be recognised automatically throughout the country. They do not require specific recognition by other Universities or by any State for the purpose of appointment to any post in any State. The decision of the Respondents de-recognising the B.Ed. degree of the Punjabi University, done through correspondence course, has been assailed being wrong, unreasonable and violative of Article 14 of the Constitution of India.

21. State of Himachal Pradesh (Respondent-1) and Director (Education) Himachal Pradesh (Respondent-2) have filed a common reply in this case. It has been stated that seeking appointment/recruitment to hold a post is absolutely outside the jurisdiction of this Court, therefore, the petition is not entertainable. The B.Ed. degree passed through correspondence course from Punjabi University has not been recognised. Recognition of a degree awarded by the University is not automatic. The State Government has to take appropriate decision in this regard for the purpose of employment. Other defences of these Respondents in this case are the same which are already mentioned in the cases mentioned above. Similar is the position with Himachal Pradesh Public Service Commission (Respondent-3).

CWP.No. 193/95 Ms. Kamlesh Kumari v. H.P. Public Service Commission and Ors.

22. The Petitioner passed her B.A. and M.A. Examination from H.P. University in 1986 and 1989 respectively. She obtained B.Ed. degree from Jammu University in 1992 through correspondence course, after obtaining permission from the department. Similarly, after obtaining permission from the department, she obtained M.Ed. degree in 1994 from H.P. University (Respondent-4). She registered herself with Employment Exchange, Lambagaon, District Kangra for seeking appointment as Trained Graduate Teacher in the Education Department of Himachal Pradesh. Like the Petitioners in other cases, she received the call-letter from Respondent-1 calling upon her to appear in the screening test on April 10, 1994. Accordingly, the Petitioner appeared in the screening test on April 10,

1994 at Dharamshala. She qualified the test and was called for interview on September 8, 1994. However, she was not allowed to appear in the interview on the ground that she had obtained B.Ed. degree through correspondence course. She filed a representation permitting her to appear in the interview. Reminders were sent but the Respondents did not do anything in the matter.

23. Again in March, 1995, the Petitioner received provisional permission for appearance in the screening test on April 2, 1995. This call notice is similar to those issued to the candidates like the Petitioners already recorded in other similar cases above. On this basis, the Petitioner apprehended that she would not be permitted to appear in the screening test on April 2, 1995. Consequently, the Petitioner has assailed the action of the Respondents on the same grounds on which the other Petitioners have done so in their respective petitions. Additionally, it has been pointed out that she obtained B.Ed. degree from Jammu University on January 6, 1992 when no decision debarring such candidates had been taken by the State Government. The decision cannot be applied retrospectively. The Petitioner had joined the course with legitimate expectation of securing job after qualifying it since the degree had not been de-recognised by the State for the purpose of employment till the time the Petitioner had obtained it.

24. State of Himachal Pradesh (Respondent-2) and Director of Education (Respondent-3) have filed a common reply stating that the Petitioner is employed under the Director of Primary Education which is separate from Respondent-3 and that the Petitioner is not eligible for appointment since she has obtained B.Ed. degree through correspondence course from Jammu which is not recognised for the purpose of employment in Himachal Pradesh. Other defences of these Respondents are the same which have been taken in the cases mentioned above. Similar is the case of Respondent-1.

CWP. No. 201/95 Rajesh Kumar Verma v. State of H.P. and Ors.

25. The Petitioner passed B.A. Examination from H.P. University. He obtained B.Ed. degree through correspondence course from M.D. University, Rohtak in 1990. The grievance of the Petitioner is against the note of H.P. Public Service Commission (Respondent-3) making candidates with B.Ed. degree through correspondence course from any University ineligible for the test and employment. The grounds of challenge raised by the Petitioner are similar to those raised by the other Petitioners, therefore, they need not be extracted extensively.

26. Reply of State of Himachal Pradesh (Respondent-1) and Director of Education (Respondent 2) is common. Jurisdiction of this Court to entertain the petition has been opposed and it has been stated that documents (Annexure PB) dealing with B.Ed. degree passed through correspondence course and Annexure-PC with B.Ed. degree passed through regular course, are not conflicting. They relate to different degrees and it is for the State Government to pass appropriate order

recognising degrees for employment under the State. Other defences of these Respondents need not be extracted comprehensively since they are similar in nature. Same is the case of public Service Commission (Respondent-3).

CWP. No. 201/95 Ghanshyam Sharma and Ors. v. State of H.P. and Ors.

27. All the seven Petitioners in this case passed their B.A. Examination from H.P. University and obtained B. Ed. degree from. M.D. University, Rohtak through correspondence course. They received call-letters from the H.P. Public Service Commission (Respondent - 3) since their names were registered with various Employment Exchange in Himachal Pradesh. Tin; Petitioners were permitted to appear in the. Screening test provisionally. The Petitioners possessed the qualifications mentioned in the call letters which included a note making the candidates passing B.Ed. degree through correspondence from any University, ineligible as per Government decision. Other contentions of the Petitioners need not be recorded in extenso, since they are similar to other cases.

28. Reply by the State of Himachal Pradesh (Respondent-1) and Director of Education (Respondent-2) is common on the same lines on which other replies have been filed in other cases. Similar is the case of the Himachal Pradesh Public Service Commission (Respondent-3).

CWP No. 210/95 Binesh Kumar v. State of H.P. and Ors.

29. The Petitioner passed his B.A. examination in 1990 from Maharaja Laxman Memorial College, Sundernagar. He obtained B.Ed. degree from Annamalai University in 1991-92 through correspondence course but attended contact programme of the University eight days regular classes. He undertook teaching practice, necessary for passing the degree through correspondence course. This University is recognised by the University Grant Commission so are its degrees including B.Ed. degree. He got himself registered with the Employment Exchange, Sundernagar on November 12, 1993 and presently he is working as a teacher in D.A.V. School, Ghumarwin and receiving Rs. 900/- per month.

30. The Petitioner received call-letter for the post of Trained Graduate Teacher (Arts) dated April 25, 1994. In it there was no condition that a candidate passing B.Ed. degree through correspondence course would not be eligible for appearing in the screening test. But in the call letter of December, 1994 this condition has been imposed surprising the Petitioner to the greatest extent. On enquiry, he was informed that this note had been incorporated on the basis of letter dated April 8, 1994, No. K(B)-4/92-Edu. issued by the State Government (Respondent-1) containing the minutes of Equivalence Committee dated March 11, 1994 deciding that B.Ed. degree obtained through correspondence. course from M.D. University, be not recognised for purpose of employment under the State. The Petitioner claims that the Respondents have not taken the decision in accordance with Chapter VII of the Hand Book on Recruitment, Promotion and other service matters (Volume-1) of Department of Personnel (AppcTntment-II), Himachal Pradesh Government, therefore, the decision is nullity and cannot be pressed

into service. He has also stated that as soon as a degree[^] is recognised by the University Grant Commission, it is automatically recognised by all the Universities in the country as well as the State Governments for all purposes. Other pleas of the Petitioner are common to other similarly placed Petitioners in the other cases.

31. The Respondents have not filed any reply in this case. However, it was stated during the course of hearing of these cases by the learned Counsel for the Respondents that the replies filed by them in other similar cases, be taken into consideration in cases in which specific replies have not been filed.

CWP. NO. 394/95 Sanjay Kumar Awasthi v. State of H.P. and Anr.

34. The Petitioner obtained Bachelor degree "B.Sc. from H.P. University in 1988. He secured B.Ed. degree through correspondence course from M.D. University in 1991. He registered himself with Employment Exchange. He received call-letter from the Himachal Pradesh Public Service Commission (Respondent-2) for screening test to be held on October 25, 1993 for the post of Trained Graduate Teacher Science (Non-medical group), but he could not qualify. He has challenged the inclusion of note in the communication of Respondent-2 making the candidates ineligible for appearing in the screening test who passed their B.Ed./B.T. through correspondence course, stating that on account of this note, he did not appear in the screening test of December 25, 1994. This action has been assailed on the ground that it is illegal, discriminatory and arbitrary liable to be quashed in the interest of justice. Other pleas of the Petitioner need not be stated in detail since they are similar to those taken by other Petitioners in similar cases.

33. Respondent-2 has filed reply in this case on the same lines on which it has done in other similar cases. The other Respondents have not filed specific reply and it being a similar case, learned Counsel for the State wanted that the reply of the State in other cases be taken into consideration in this case also.

CWP No. 395/95 Neera Devi v. State of H.P. and Anr.

34. The Petitioner passed B.Sc. Examination from Himachal Pradesh University in 1988. She obtained B.Ed. degree through correspondence course from M.D. University, Rohtak in 1989. Being in possession of B.Sc. B.Ed. degrees, she registered herself with Employment Exchange, Sarkaghat so that she could secure the post of Trained Graduate Teacher with the State Government. Her name was sponsored by the Employment Exchange since she fulfills the required qualifications. The Himachal Pradesh Public Service Commission (Respondent-2) held screening test for Trained Graduate Teachers (Arts) on December 25, 1994. The interview letter issued to the Petitioner recorded a note that candidates who had passed their B.Ed./B.T. through correspondence course, were not eligible for appearing in the screening test. Consequently, the Petitioner did not appear in the said test on December 25, 1994. Other pleas of the Petitioner in this case are common to those in other petitions.

35. Respondent-2 has filed reply in this case. It is similar to those in other cases. Specific reply of Respondent-1 is not there. Learned Counsel for the State wanted that in this case also the defence of the State is the similar which it has taken in other similar cases.

36. Having extracted the material facts of all the cases, it is necessary to deal with the preliminary objection raised by the learned Advocate General.

37. It was contended that the grievance raised by the Petitioners in these cases cannot be adjudicated in this Court after the constitution of State Administrative Tribunal under the Administrative Tribunal Act, 1985. Acquiring of educational qualification is distinct from recruitment and appointment to any civil service of the State or to any civil post under the State. The first stage of acquiring the educational qualification may be outside the purview of the Tribunals, but matters falling under second and third stages, fall within the adjudicatory jurisdiction on the Tribunal.

38. Learned Counsel for the Petitioners contended that the objection as to the maintainability of these petitions in this Court cannot be entertained since it has not been raised specifically in the reply-affidavits of the Respondents.

39. It may be true that the State has not raised this objection specifically except in Civil Writ Petition No. 182 of 1995, Smt. Kiran Prabha v. State of H.P. and Ors. in a cursory way, the learned Advocate General was permitted to urge it, since this objection is purely legal and goes to the root of the matter.

40. Part XIVA became part of the Constitution of India by the Constitution (Forty-Fourth Amendment) Act, 1976 inserting Article 323-A providing for the Constitution of Administrative Tribunals. It envisages that:

323-A. Administrative tribunals.-

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under Clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme

Court under Article 136, with respect to the disputes or complaints referred to in Clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under Clause (3) of Article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

41. Section 15 of the Administrative Tribunals Act, 1985 deals with the jurisdiction, powers and authority of the State Administrative Tribunal. It is *pari materia* with Section 14 of the Act dealing with the jurisdiction, powers and authority of the Central Administrative Tribunal. It reads as under:

15. Jurisdiction, powers and authority of State Administrative Tribunals. -(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person (not being a person referred to in Clause (c) of this sub-section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation (or society) owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Clause (b), being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date

as may be specified in the notification the provisions of Sub-section (3) to local or other authorities or corporations (or societies) controlled or owned by the State Government.

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations (or societies).

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation (or society), all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation (or society); and

(b) all service matters concerning a person (other than a person referred to in Clause (b) of Sub-section (1) of this section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.

42. The Administrative Tribunals Act, 1985 (Act No. 13 of 1985) was enacted by the Parliament. It came into force from February 27, 1985 and was subjected to certain amendments in 1986 (Act No. 19 of 1986). The long title to the Act provides that:

An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution and for matters connected therewith or incidental thereto.

43. Learned Advocate General did not challenge the correctness of Full Bench Decision of this Court in Padma Sharma and Ors. v. State of H.P. and Ors. 1990 (1) S.L.C. 1, on the ground that this decision is limited to the first stage of the matter, but contended that further extension of this principle by the Division

Bench of this Court in *Ramesh Chander v. State and Anr.* (I.L.R.) 1995 (HP) 71 on the lines of Division Bench Judgment of Madras High Court in *The Chairman Railway Recruitment Board Madras v. S. Ruban Peter and Ors.* (1990 Lab. i.c. 1759) would be wrong. Strong plea was made for accepting the view of Full Bench decision of Madras High Court in *Government of Tamil Nadu v. P. Hepzi Vimalabai* ILR (1994) 3 Mad 769, which over-ruled Ruban's case (supra). Reliance was also placed on decision from other High Courts taking the similar view.

44. All the learned Counsel for the Petitioners strongly opposed the stand taken by the State. They contended that this Court in *Padma Sharma and Ors. v. State of H.P. and Ors.* 1990 (1) S.L.C. 1, and *Ramesh Chander v. State and Anr.* ILR 1995 (HP) 71; and the Madras High Court in *The Chairman, Railway Recruitment Board Madras v. S. Ruban Peter and Ors.* 1990 Lab. i.c. 1759, have decided the question of jurisdiction correctly, therefore, there is no justification for taking a different view on the question.

45. For appreciating these rival submissions of the two sides, it is necessary to know what has been held in the decisions placed before us by the learned Counsel for the parties.

46. In *Padma Sharma and Ors. v. State of H.P. and Ors.* 1990 (1) S.L.C. 1, Full Bench of this Court had occasion to consider the question of the exercise of jurisdiction by the State Administrative Tribunal and the content of "recruitment and matters concerning recruitment" to any civil service of the State or any civil post under the State as occurring in Section 15(1)(a) of the Administrative Tribunals Act, 1985. Facts of the case were that the Petitioners sought relief of admission to one year Junior Basic Training Condensed Course on the basis of their qualification as diploma-holders in Nursery and Infant Training Course. A memorandum had been issued by the Director of Education, Himachal Pradesh out-lining the scheme for one year Junior Basic Training Condensed Course for Nursery qualified candidates of the State. This Scheme had been sent to the Headmasters and Heads of some institutions. It prescribed, among other things, the eligibility, the age limit, the authorities and the criteria for selection to the Course. Condition No. 3 was under:

After successful completion of training, employment will be provided to the candidates on their return subject to availability of posts and they shall have no claim for appointment as a matter of right for recruitment. They shall have to appear before the prescribed selection board in case their names are sponsored by the Employment Exchanges. The cost of the training will have to be borne by the candidates.

47. Contention of the State was that acquisition of eligibility for being considered for recruitment by admission to the Junior Basic Training Condensed Course was one of the "matters concerning recruitment", within the ambit of Clause (a) of Section 15(1) of the Act. The question was whether this kind of case could be considered by the High Court in exercise of writ jurisdiction or it was to be

transferred for adjudication to the State Administrative Tribunal. The Court held that:

7. Recruitment to a service or a civil post connotes the idea of enlistment, acceptance, selection or approval for appointment to a service or to a civil post. It embraces within its ambit any step taken by the employer towards enlistment, acceptance, selection or approval for appointment to a service or a post. It is clear that unless the employer initiates the process towards the aforesaid, it is not possible to say that he has taken any steps towards recruitment to a service or post. In service jurisprudence the phrase "recruitment" to a service or a civil post has acquired a definite meaning. According to Webster's Third New International Dictionary at page 1899, "recruitment", means the act or process of recruiting or an act of offering inducement to qualified personnel to enter a particular job or profession. This is the basic characteristic of the term "recruitment" in the context of service jurisprudence. We share the view expressed by a Division Bench of the Punjab and Haryana High Court in *Basant Lal Malhotra Vs. State of Punjab and Others*, when it says:

the term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment....

9. The Scheme provides that after successful completion of training, employment will be provided to the candidates on their turn subject to availability of posts and they shall have no claim for appointment as a matter of right for recruitment. This condition clearly rules out any claim, on the part of the person who is admitted to and obtains training in one year Junior Basic Training Condensed Course, to appointment to any service or civil post under the State of Himachal Pradesh by virtue only of having received such training. The J.B.T. Condensed Course only enables a person admitted to it to acquire eligibility for being considered for recruitment to a service or a civil post and no more.

The Court further held that:

10. The acquisition of eligibility for appointment, by itself, does not amount to recruitment as understood in service law. Moreso, having regard to the terms of the Scheme.

Then, in paras 11 and 12, it has been observed that:

11. An attempt was made to urge that the acquisition of eligibility for being considered for recruitment, by admission to the J.B.T. Condensed Course, was one of the "matters concerning recruitment" within the ambit of Clause (a). It is difficult, however to accept this submission. Merely because the Condensed Course had been started to enable inelligible persons to become eligible for appointment as trained teachers and had been started by the Government with a view to enable such persons to be considered for recruitment, though not necessarily leading to their appointment, the admission to the Condensed Course cannot be treated as a matter concerning recruitment within the meaning of

Clause (a). If the submission made on behalf of the Respondents is accepted, it would amount to giving a meaning to the word "recruitment", which would not be in consonance with the accepted meaning of that term as understood in the service jurisprudence.

12. Before a matter can be treated to be one concerning recruitment, it should be shown to be related with the act or process of recruitment or an act of offering inducement to a qualified person to enter a particular job or profession. In other words, it should be a part of a step for enlistment, acceptance, selection or approval for appointment to a service or a civil post. Unless, the employer initiates a process towards enlistment, selection or approval for appointment, it is difficult to say that he has taken any step towards recruitment to a service or a post. Till the process is so initiated, the mere fact of affording facility to an ineligible person to acquire eligibility for consideration for appointment to a service or a civil post cannot be characterised as a matter concerning recruitment.

Finally, the Court held in para 13 that:

13. The Scheme expressly mentions that the successful completion of the training will not give rise to a claim for appointment as a matter of right. The matter was put beyond any shadow of doubt by the Director of Primary Education, Himachal Pradesh, by intimating all the District Primary Education Officers through his letter of November 27, 1986, that it had been decided by the Government that 50% of J.B.T. vacancies, which were earlier filled up by them, shall thereafter be filled up by the Himachal Pradesh Public Service Commission. It is clear, therefore, that the candidates who successfully complete one year Junior Basic Condensed Course will have to seek employment only through the Public Service Commission. The fact of having obtained the training would not give them any right, whatsoever, of seeking employment merely because they were admitted to the one year Junior Basic Training Condensed Course and had successfully completed it.

48. The principle laid down by this Court "in this case" was not only accepted by Division Bench of Madras High Court in *The Chairman, Railway Recruitment Board Madras v. S. Ruban Peter and Ors.* 1990 Lab. I.C. 1759, but also extended further after taking into consideration some important provisions of the Act and the Rules which were not placed for consideration before the Full Bench of this Court. It is necessary to quote extensively the following paragraphs of this Judgment (paras 15, 17, 18, 20, 21):

15. The expression "recruitment and matters concerning recruitment" occurring in Clause (a) of Sub-section (1) of Section 14 of the Act on which emphasis has been laid by learned Counsel for the Appellant to urge that High Court's jurisdiction has been excluded even in cases which are at the pre-recruitment stage and that persons who are not "in service" can also only approach the tribunals after 1.11.1985, if the grievance of such persons has any co-relation

with non-recruitment to services, has to be read in the context in which it appears in the said section and cannot be divorced from the subsequent expressions in the clause and other provisions of the Act. The use of the expression "recruitment and matters concerning recruitment", in our opinion, would imply that the "in-service" candidates can raise disputes before the tribunals even in respect of matters relating to recruitment, but no person who is not "in service" can approach the tribunal for redressal of any grievance. Various clauses of Section 3(q) (supra) unmistakably show that the types of disputes referred therein can only be raised by persons "in service" as they relate to none else. It is a salutary principle of construction of statutes that to arrive at the true meaning of any particular phrase in it, that phrase is not to be viewed in isolation. The statute must be read as a whole. Indeed, this principle cannot be called in aid to alter the meaning of what by itself is clear and explicit, but the given phrase must be so construed, as far as it is possible, that any absurdity and mischief may be avoided. The consideration of the expression "recruitment and matters concerning recruitment" occurring in Section 14(1)(a) of the Act, divorced from the context in which it appears and without examining the provisions of other sections of the Act, can lead to absurdities. If the argument of learned Counsel for the Appellant were to be accepted that the tribunal can be approached even by persons who are not in service provided they have a grievance against "recruitment and matters concerning recruitment," then it would imply that even a person who is not personally aggrieved would also be entitled to maintain an application under the Act in public interest. This is not possible. Such a person can only approach the High Court in exercise of the writ jurisdiction and not the tribunal. Of course, public interest does not require administration to be maintained smoothly and efficiently, but we are afraid the jurisdiction of the tribunal cannot be extended to adjudicate upon disputes in public interest, since the jurisdiction, authority and powers conferred on the tribunal are only to be exercised as contemplated by the provisions of the Act; construed in this light, it is not possible to hold that the jurisdiction of the High Court would be riot available to persons who are not in service when they have a grievance relatable to some service. Before the tribunal only the "in-service" persons can agitate in respect of matters covered under the Act.

17. Undoubtedly a person who is not in service cannot be said to be an "aggrieved person" u/s 19. Inviting applications for a post does not by itself create any right to the post in any candidates who in response to the advertisement makes an application. He only offers himself to be considered for the post. It does not create any right in the candidate to the post. Even the pre-recruitment formalities, such as medical examination, direction to deposit some money as security, does not amount to a promise to appoint the Applicant. Mere expectancy of being taken in service or the pre-recruitment formalities having been gone through does not create any promise which the employer would be estopped from ignoring. Of course, in public service, a candidate who is otherwise fit, able and appropriate person for appointment, should not be

ignored on any extraneous consideration; but at the same time, he or she cannot claim that he or she has acquired some rights to be appointed to the post for which he or she is a candidate just because he or she had applied for the post and had even gone through the pre-recruitment formalities. No such candidate can approach the tribunal for redressal of any grievance and for such a person the invoking of the jurisdiction under Arts.226/227 of the Constitution has not been excluded. It would also be relevant in this connection to take notice of the application form as prescribed under the Act to raise a dispute before the Tribunal.

18. The application for raising a matter before the tribunal in Form 1 as framed u/s 19 of the Act goes to show that dispute can be raised only by "in-service" candidates and not by persons who are not "in service". The Applicant has, in paragraph 1 of the form, to give the designation of the office in which he is employed and in paragraph 2 he has to provide the particulars of the order against which the application is made. He has also to declare in paragraph 9 that he has availed of all the remedies available to him under relevant Service Rules before approaching the tribunal. The application form also, thus, supports and fortifies our view that the jurisdiction of the High Court has not been excluded in respect of persons who are not "in service" and who are not "aggrieved" persons within the meaning of Section 19 of the Act and that the jurisdiction of the tribunal is limited only to resolving the disputes raised by any aggrieved person in respect of matters covered by Section 14 of the Act read with Section 3(q) of the Act and that such of disputes can be raised only by or against the "in service" candidates.

20. A plain reading of Article 323-A of the Constitution (supra) shows that the Parliament was authorised to create Administrative Tribunals to adjudicate disputes and complaints not only with regard to conditions of service of the persons appointed and working under the Central Government or the State Government or other authorities etc. but also that the tribunals would hear and adjudicate matters relating to recruitment of persons appointed to public services and posts in connection with the affairs of the Union etc. The Act was enacted pursuant to the power contained in Article 323-A (supra). The tribunal constituted under the Act and the Act itself, therefore, could provide for the adjudication or trial of disputes and complaints with respect to "recruitment and conditions of service" of persons already appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the application is made. He has also to declare in paragraph 9 that he has availed of all the remedies available to him under relevant Service Rules before approaching the tribunal. The application form also, thus, supports and fortifies our view that the jurisdiction of the High Court has not been excluded in respect of persons who are not "in service" and who are not "aggrieved" persons within the meaning of Section 19 of the Act and that the jurisdiction of the tribunal is limited only to resolving the disputes raised by any aggrieved person in respect of matters covered by Section 14 of the Act read

with Section 3(q) of the Act and that such of disputes can be raised only by or against the "in service" candidates.

20. A plain reading of Article 323-A of the Constitution (supra) shows that the Parliament was authorised to create Administrative Tribunals to adjudicate disputes and complaints not only with regard to conditions of service of the persons appointed and working under the Central Government or the State Government or other authorities etc. but also that the tribunals would hear and adjudicate matters relating to recruitment of persons appointed to public services and posts in connection with the affairs of the Union etc. The Act was enacted pursuant to the power contained in Article 323-A (supra). The tribunal constituted under the Act and the Act itself, therefore, could provide for the adjudication or trial of disputes and complaints with respect to "recruitment and conditions of service" of persons already appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation etc. Since Section 14 and the other provisions of the Act noticed above derive their strength from the Act enacted by virtue of the powers contained in Article 323-A of the Constitution (supra), the expression "recruitment and matters concerning recruitment" as occurring in Section 14 of the Act cannot travel beyond the provisions of Article 323-A of the Constitution, which, as already noticed, authorised the Parliament to, by law, provide tribunals for adjudication of disputes and complaints with respect to recruitment and service conditions of the employees who are already in service of the Union etc. It is fundamental that no subordinate legislation can either override or widen the provisions contained in the Constitution and considered in that light also it becomes obvious that the use of the expression "recruitment and matters concerning recruitment" occurring in Section 14 must be confined and related to persons who have been appointed to public services or who hold posts in connection with the affairs of the Union etc. A Full Bench of the Himachal Pradesh High Court in *Padma Sharma v. State of H.P.* (1989) 3 Ser. L.J. 129, had occasion to consider the question of the exercise of jurisdiction by the Administrative Tribunal for the State and the import of the expression "recruitment and matters concerning recruitment" to any civil service of the State or any civil post under the State as occurring in Section 14(1)(a) of the Act (which section is in parimateria to Section 14(1)(a) of the Act relating to the Central Administrative Tribunal). In the case before that Court, the writ Petitioners had sought direction that they be admitted to one year Junior Basic Training Condensed Course on the basis of their qualification as diploma holders in Nursery and Infant Training Course, A memorandum had been issued by the Director of Education, Himachal Pradesh outlining a scheme for one year Junior Basic Training Condensed Course for Nursery qualified candidates of the State. This scheme had been communicated to the Headmasters and Heads of some institutions. The scheme contained in the memorandum mentioned several conditions, after giving out the eligibility, the age limit and the authorities and

the criteria of selection for admission to the Course. Condition No. 3, amongst various conditions mentioned at the end of the memorandum, was in the following terms:

After successful completion of training, employment will be provided to the candidates on their return subject to availability of posts and they shall have no claim for appointment as a matter of right for recruitment. They shall have to appear before the prescribed selection board in case their names are sponsored by the Employment Exchanges. The cost of the training will have to be borne by the candidates.

On behalf of the Petitioners, it was urged that the acquisition of eligibility for being considered for recruitment, by admission to the J.B.T. Condensed Course was one of the "matters concerning recruitment" within the ambit of Clause (a) of Section 15(1) of the Act. The court was called upon to decide as to whether the dispute of the type raised by the Petitioners could be considered by the High Court in exercise of the writ jurisdiction or was required to be transferred for adjudication to the tribunal. The Full Bench observed:

Merely because the Condensed Course had been started to enable ineligible persons to become eligible for appointment as trained teachers and had been started by the Government with a view to enable such persons to be considered for recruitment, though not necessarily leading to their appointment, the admission to the Condensed Course cannot be treated as a matter concerning recruitment within the meaning of Clause (a). If the submission made on behalf of the Respondents is accepted, it would amount to giving a meaning to the word "recruitment" which would not be in consonance with the accepted meaning of that term as understood in the service jurisprudence.

Their Lordships, then, went on to say:

"Recruitment to a service of a civil post connotes the ideas of enlistment, acceptance, selection or approval for appointment to a service or to a civil post.

....

The acquisition of eligibility for appointment, by itself, does not amount to recruitment as understood in service law....

The Full Bench said:

The Administrative Tribunals Act, 1985 was enacted as an Act to provide for the adjudication or trial by Administrative Tribunal of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts....

and finally held:

We are of opinion that a petition like the present where the Petitioners are seeking redressal in the matter of their admission to the J.B.T. Condensed Course

does not deal with a matter concerning recruitment to a civil service or a post under the State of Himachal Pradesh. It cannot be directed to be transferred for consideration to the Himachal Pradesh State Administrative Tribunal. The Petitioners are entitled to consideration of their petition under Article 226 of the Constitution by this Court." The view expressed by the Himachal Pradesh High Court fortifies our opinion.

21. In view of the aforesaid discussion, the conclusion is irresistible that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India to deal with the service matters with effect from 1.11.1985 is excluded only in so far as the employees already in service of the Government, local authority etc. are concerned, provided they relate to matters which strictly fall within Section 14 read with Section 3(q) of the Act and not in other cases and it is only an "aggrieved person" as contemplated by Section 19 of the Act who is required to approach the Tribunal only for adjudication and trial of such disputes and complaints etc. In all other cases, the jurisdiction of the High Court under Articles 226/227 of the Constitution remains intact even after 1.11.1985. The question posed in the early part of the Judgment is thus answered accordingly. The learned single Judge, under the circumstances, was right in rejecting the preliminary objection and holding that the question raised in the writ petitions, which arose at the pre-recruitment stage by persons not already "in service" could be gone into by the High Court in exercise of the writ jurisdiction. We accordingly uphold the Judgment under appeal and dismiss these appeals....

48-A. This view was accepted by this Court in Ramesh Chander's case (supra) in the following terms:

10. While deciding the above question, the Madras High Court also took note of the Full Bench of this Court in Padma Sharma (supra) and quoted with approval relevant paragraph of the judgment. We are in respectful agreement with the law laid down by the Madras High Court and we hold that a person who is in service can only approach the Tribunal for redressal of any grievance and that a person who is not in service cannot approach the Tribunal as the Tribunal has no such jurisdiction if we read Sections 14 and 19 along with form "1" of this Act.

49. As said, Full Bench of Madras High Court did not approve the decision in Ruban's case (supra) in Government of Tamil Nadu v. P. Hepzi Vimalabai ILR (1994) 3 Mad 769. In paras 30, 33, 35, 36 and 37 it has been held that:

30. In our view, the use of the expression matters concerning recruitment" is wide enough to cover and include all matters concerning recruitment. There is no warrant to make a distinction between "pre-recruitment matters" and "recruitment matters". We are of the opinion that the view expressed by the Division Bench in Ruban's case that only "in service" candidates can raise disputes in respect of matters pertaining to recruitment and not a person not in service is not acceptable. On the contrary, "recruitment" is a process which would cover within its ambit all the necessary steps commencing from the stage

of notifying the vacancies and ending with appointment of selected candidates. The fact that the definition of the expression "service matters" in Section 3(q) of the Act does not make any reference to recruitment is wholly irrelevant. "Recruitment" is separately referred to in the preamble as well as in the relevant provisions of the Act. In addition thereto, the expression "conditions of service of persons appointed" is also found. Section 3(q) of the Act is applicable to persons appointed to service. That is why that section does not make any reference to "recruitment".

33. Section 19 of the Act, which deals with the making of applications to the Tribunal, is merely procedural and in our opinion, the said provision is wide enough to cover any matter which falls within the jurisdiction of the Tribunal. We have already explained the scope and jurisdiction of the Tribunal to deal with all disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union and the State. Section 19 of the Act cannot control the substantive provisions of Sections 14 and 15 of the Act. Form 1, which was framed u/s 19 of the Act, cannot also, in our view, be pressed into service to understand the scope of jurisdiction of the Tribunal under Sections 14 and 15 of the Act.

35. The expressions "service" and "post" are defined in Clauses (P) and (K) of Section 3 of the Act as service or post within or outside India. The expression "service matters" occurring in this section is also referred in Clause (q) of Section 3 as all matters relating to the conditions of service of any person in connection with the affairs of Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government. Accordingly, this section provides that no Court except the Supreme Court shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

36. Article 323-A of the Constitution uses the expression "recruitment" and "conditions of service" of persons appointed to public service and posts. There is a clear distinction between the word "recruitment" and "appointment". Having regard to the use of the words "recruitment" and "matters concerning recruitment" in the Preamble and in Sections 14, 15 and 28 of the Act and in Article 323-A of the Constitution, it is clear that the Tribunal shall have exclusive jurisdiction to deal with all matters specified therein and the High Court shall not have jurisdiction to decide questions relating to recruitment and matters concerning recruitment in writ petitions filed under Article 226 of the Constitution of India.

37. Further, we are also of the view that the word "recruitment" cannot be clubbed with the expression "appointment" because persons appointed will never be aggrieved by recruitment. This is the view taken by a Division Bench of the Allahabad High Court in the case of Studhan Shee Tripathi v. Union of India which

reads as follows:

In Clause (1) of Article 323-A the relevant words used are "recruitment" and "conditions of service of persons appointed to public service and posts". It is obvious that the words "recruitment" and "conditions of service of persons appointed" have been used to indicate different meanings and purpose. The appointment to public service or post is not the same thing as the recruitment. The "appointment" as defined in Words and Phrases, Permanent Edition, Volume 3-A means the designation of person to hold an office (Use of Braden V.O. "Neill, 83 Article 2d 382). It also means the designation of a person, by the person or persons having authority therefore to discharge the duties of some office or trust in re: Nicholson's Estate.

"Appointments" is used in the sense of designation to or selection for public office not only as meaning the office or service to which one is appointed, but denoting the right or privilege conferred by an appointment, and the subject of a term of office is fairly included in a board significance of the word State v. Peake.

The meaning of the word "recruitment" specified in the Shorter Oxford Dictionary Vol.11, 1978 Edition page 1768 is "a reinforcement; the act or process of recruiting."

Taking clue from the words used in Article 323-A of the Constitution the Parliament deliberately used the words "recruitment" and "matters concerning recruitment" in Sections 14 and 28 of the Act so as to indicate that the Tribunal shall have exclusive jurisdiction to deal with these matters and that the High Court in view of the specific provisions contained in Section 28, shall not have jurisdiction to entertain or adjudicate upon the petition in which questions relating to recruitment and matters concerning recruitment are raised.

In view of the above, we are unable to subscribe to the view taken by the Full Bench of the Himachal Pradesh High Court in the decision reported in 1989 (3) A.I.S.L.J., 129.

50. For coming to the aforesaid conclusion, support has been taken from Full Bench decisions of Andhra Pradesh and Madhya Pradesh High Courts in K. Naga Raja and Others Vs. The Superintending Engineer, Irrigation Department, Irrigation Circle, Chittoor and Another, ; Dr. Usha Narwariya Vs. State of M.P. and Others, ; Supreme Court decisions in Prafulla Kumar Swain v. Prakash Chandra Misra (1993) 1 L.L.J. 749); and Sudhan Shee Tripathi v. Union of India, (1988) 56 FLR 696).

51. In K. Naga Raja and Others Vs. The Superintending Engineer, Irrigation Department, Irrigation Circle, Chittoor and Another, , it has been held in para 4,5,6 and 7 that:

4. The sole ground urged in the argument of the learned Counsel for the Petitioners in support of the plea of maintainability of the writ petitions was that the Presidential Order applied only to "appointment" not to "recruitment", by

which expression he meant the selection process and procedure leading to actual appointment. It was vehemently argued before us that what the Petitioners sought was not a direction for appointment, but only one for their being considered for appointment by the process of selection which preceded actual appointment, to which according to the learned Counsel, neither Clause (7) of Article 371-D of the Constitution nor any of the provisions contained in Section 14, Administrative Tribunals Act, 1985 (Act No. 13 of 1985)(hereinafter referred to as "the Central Act"), for adjudicating disputes with respect to "recruitment" and "matters concerning recruitment" of personnel in the service of the Central Government. (sic) Great stress was laid on the expressions "recruitment" and "matters concerning recruitment" occurring in Section 14 of the Central Act, which deals with jurisdiction, powers and authority of the Central Administrative Tribunal. True it is the words "recruitment" and "appointment" are not synonymous. Each has its separate connotation. The difference between the two words, however, would not in any way advance the Petitioners' case that the Tribunal appointed under the Presidential Order (hereinafter referred to as "the Administrative Tribunal") would derive jurisdiction only when the dispute relates to a person already employed in the service; and that any dispute relating to the process of selection leading to appointment would not fall within its ambit. As the Supreme Court pointed out in *Shri Narakesari Prakashan Ltd. and Others Vs. Employees' State Insurance Corporation and Others*, para 10 at p.1920: 1985 Lab IC 396 at p.400, "the effect of an act cannot be controlled by the provisions of Anr. Act unless the provisions in one have bearing on the provisions of the other". We have already noticed the historical background of the insertion of Article 371-D. We have also noticed what the Administrative Tribunal constituted under Clause (3) is authorised to do under Clause (4) of that Article. The Central Act, on the other hand, is an Act of Parliament in exercise of the power conferred under Article 323-A of the Constitution.

5. It is a settled proposition that in interpreting the provisions of the Constitution, the widest possible amplitude should be given to the expression used therein. The Constitutional object of Article 371-D, as we could gather, with particular reference to Clause (7) thereof, is to relieve the High Court (for that matter, every other court and tribunal, except the Supreme Court) of the burden concerning service matters relating to State Government employees; and in that view also it would run counter to the provisions of the Article both in letter and spirit if we give a restrictive meaning to the application of the provisions barring the jurisdiction of the High Court in terms of Clause (7) of the Article. Viewed in that light, we are clear in our mind that the expression "with respect to appointment" in Clause (3) of Article 371-D should not be given a narrow meaning as to restrict its application to the stage after actual appointment. That expression not only takes within its sweep actual appointment as such or any stage posterior to such appointment, but also every stage leading to the appointment. The entire process of appointment forms an integral whole and it could not be taken in parts, so as to exclude the exercise in the process of

selection leading to appointment from the jurisdictional ambit of the Administrative Tribunal. No such distinction or differentiation is warranted if we go by the plain meaning of the expression used. The principle and reasoning underlying the observations of Gajendragadkar, J. (as he then was) in *The General Manager, Southern Railway Vs. Rangachari*, (in para 16 at p. 41) that "there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment" should hold with equal force to the expression "with respect to appointment" occurring in Clause (3) of the Article also. The usage of the word "with respect to appointment" in fact conveys a larger meaning, not a narrower meaning than the usage "appointment" simpliciter.

6. The counsel for the Petitioners strongly relied on the expression "person employed" used in para 7 of the Presidential Order to contend for the position that the Tribunal was authorised to receive representations for the redress of their grievances only from persons employed in service of the Government and, therefore, the writ Petitioners were not precluded from invoking the writ jurisdiction of this Court to seek the appropriate relief. This contention overlooks what precisely is the meaning of the expression "person employed" used in para 2(1)(d) of the Presidential Order is meant to remove any doubt on this question, and it reads as follows:

"person employed" means an individual in relation to whom the Tribunal has jurisdiction in respect of the matters specified in para 6 of this order.

It is evident that the expression "person employed" is used in a comprehensive sense for the sake of convenience to avoid repetition. Though at the first flush the argument of the learned Counsel for the Petitioners would appear to be attractive, even in the absence of the definition in para 2(1)(d) of the Presidential Order, a careful analysis of the language guardedly used in sub-para (1) of para 7 thereof, would indicate that the persons employed are persons who are entitled to approach the Tribunal with "representations for the redress of their grievances relating to matters within its jurisdiction" which implies that the right of the persons to seek redressal extends to all matters within its jurisdiction. The provisions contained in sub-para (2) of para 7 of the Presidential Order are also of some relevance. The combined effect of Clauses (3), (4) and (7) of Article 371-D of the Constitution and Paras 2(1)(d), 6 and 7 of the Presidential Order is that the Administrative Tribunal, and Administrative Tribunal alone, has jurisdiction to entertain matters with respect to appointment inclusive of selection process for being appointed to the post in service of the Government. It has to be noticed that para 7 of the Presidential Order is one which lays down procedure than one conferring any right or jurisdiction. It is, in fact, an enabling provision which gives guidance as to what the Tribunal was expected and authorised to do when a person invokes its jurisdiction in terms of para 6(1) of the Presidential Order. It would be absolutely unreasonable to hold that the intention of using the

expression "person employed" is to restrict the jurisdiction of the Tribunal.

7. We notice that the Division Bench in Dr. Venkat Reddy's case 1982 Lab.IC 1927 (Andh.Pra)(supra) in para 10 is seen to have stated as follows:

suffice for the purpose of these writ petitions dealing with the preliminary objection, we held that such an order has not been made by the President so far, and the Andhra Pradesh Administrative Tribunal Order 1975 as it stands, makes a provision only for a person already employed under the State of Andhra Pradesh, to make a representation with regard to the grievance before the Tribunal.

On going through the decision of the Division Bench we notice that it does not advert to the definition of the term "person employed" in para 2(1)(d) of the Presidential Order, it does not appear to have been brought to the notice of the learned Judges during the course of the hearing of the case, that in all probability led to the Division Bench giving the ruling relied on by the Petitioners, which, with due respect, we are constrained to hold, does not represent the correct position in law.

52. In Dr. Usha Narwariya Vs. State of M.P. and Others, , it has been held in para 21 and 26 that:

21. It is thus clear that recruitment is an earlier part of the process which culminates in appointment. Selection is part of recruitment process and precedes appointment. Notifying the vacancies, inviting applications, their scrutiny, finalisation of list of such eligible candidates as would be put to test, their written or oral test and interview, selection and approval for appointment, are all different steps in the process of recruitment. So it would not have any difference if the Preamble to the Administrative Tribunals Act and Sections 14 and 15 thereof would have used the term "recruitment" merely and avoided the use of the word "matters concerning recruitment" inasmuch as "matters concerning recruitment" would have been deemed to be included in "recruitment" itself. The use of the phrase "matters concerning recruitment" preceded by the word and conjunction "recruitment and" is definitely suggestive of legislative intent to make the provision wide in its import so as to include in "matters concerning recruitment" all such matters as could unwittingly be left out of "recruitment". Such an interpretation would also advance the object behind enactment of Tribunals Act.

26. Having interpreted the term "recruitment" as we have done, consistently with the law laid down by the Supreme Court, we are of the opinion that we see no justification in carving out jurisdiction to the courts from the jurisdiction of the Administrative Tribunals by drawing a distinction between "pre-recruitment matters" and "recruitment matters" for such a distinction would be not real, but merely a distinction without any difference. What has been called "pre-recruitment" disputes in some of the decisions is nothing but a "dispute concerning recruitment" within the meaning of the Act and the "dispute or complaints with respect to recruitment" within the meaning of Article 323-A of

the Constitution. Such a dispute would lie within the jurisdiction of the Administrative Tribunals.

53. Reference to some of the large number of decisions defining "recruitment" and "appointment" may be necessary. In *Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others*, , it has been said in para 29 that:

29. At this stage, we will proceed to decide as to the meaning and effect of the words "recruitment" and "appointment". The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word "appointment" means an actual act of posting a person to a particular office.

54. In *Partap Chandra Rout and Ors. v. State of Orissa and Ors.* (1986 (4) SLR 356), it has been held in para 4 that:

4. ...Learned Counsel for the Petitioners contended that the provisions of the Act would have application only after a person is appointed in the. service and not before that as according to him, the expressions "recruitment and conditions of service of persons appointed to public services" in Article 323-A of the Constitution should be read as a whole and if done so it would take to the question to adjudicate the conditions of service and unless a person happens to be already in the service, there cannot be any adjudication of the conditions of his service. In other words, his contention is that by use of the word "and", the legislature made the entire matter as one whole and the expression "recruitment" cannot be read separately.

I am afraid, the construction put by the learned Counsel for the Petitioners is entirely erroneous and misconceived. If such a construction is put, which is in the context of any rule of construction is not feasible, it will frustrate one of the purposes for which the Tribunal has been established and give rise to division of jurisdiction in regard to matters pertaining to "service". The entire exercise for establishment of Administrative Tribunals by amending the Constitution was to take away the cases relating to "service" from the jurisdiction of the High Courts and put them within the fold of a separate forum where they could be adjudicated more speedily. The Court must therefore put a construction which is harmonious and furthers the aim and object of the legislation instead of impeding the same. The legislative intendment to my view is to transfer to the Administrative Tribunal all cases concerned with the disputes relating to the stage of recruitment, i.e. prior to the actual appointment. There has been so great laxity in the use of the terms "and" and "or" that courts have generally said that the words are inter-changeable and that one may be substituted for the other, if to do so is to make it consistent with the legislative intent. In view of construction of the preamble and the scheme of the Act as indicted above, if the contention of the learned Counsel for the Petitioners is accepted, then obviously a part of the object of the Act is bound to be defeated.

The word "recruitment" cannot suggest that it must be understood in relation to a completed appointment and not to a stage where the appointment is still under consideration and is being processed ultimately leading to the appointment in service. It is only after the culmination of the process of recruitment that an appointment takes place. "Recruitment" and "appointment" therefore must mean two separate stages, quite distinct from each other. Therefore, in the words "Recruitment and conditions of service of persons appointed", the word "appointed" would relate only to "conditions of service" and not to the word "Recruitment" which is a stage prior to getting into service. I also find support for the view from a decision of the Punjab & Haryana High Court in *Gurdev Singh v. State of Punjab* 1968 Serv. L.J. 538. According to Chambers Dictionary, the word "recruit" means:

a new supply (of men, money, health etc.); to obtain fresh supplies; to enlist new soldiers or to reinforce or to replenish or to reinvigorate or to enlist or raise.

So "recruitment" is only for the purpose of making up the deficiency which occurs in the cadre. "Appointment" means an actual act of posting a person to a particular office. Both the terms, cannot be said to be synonymous. I am, therefore, unable to accept the submission that the expression "recruitment" here should signify actual "appointment".

55. In *S.R. Bommai and others Vs. Union of India and others etc. etc.*, it has been observed in paras 238, 239 and 240 that:

238...Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of *casus omissus* or of pressing into service external aid, for in such a case the words used by the constitution or the statute speak for themselves and it is not the function of the court to add words or expressions merely to suit what the court thinks is the supposed intention of the legislature. In *American Jurisprudence 2d Series*, Vol.73 at page 397 in para 203 it is stated that:

It is a general rule that the courts may not, by construction insert words or phrases in a statute or supply a *casus omissus* by giving force and effect to the language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the minds of the legislature at the time of the enactment of law.

Under such circumstances new provisions or ideas may not be interpolated in a statute or engrafted thereon. At page 434 in para 366 it is further stated that:

While it has been held that it is duty of the courts to interpret a statute as they find it without reference to whether its provisions are expedient or unexpedient, it has also been recognised that where a statute is unambiguous and subject to more than one interpretation, the expediency of one construction or the other is properly considered. Indeed, where the arguments are nicely balanced, expediency may tip the scales in favour of a particular construction. It is not the

function of a court in the interpretation of statutes, to vindicate the wisdom of the law. The mere fact that the statute leads to unwise results is not sufficient to justify the court in rejecting the plain meaning of unambiguous words or in giving to a statute a meaning of which its language is not susceptible, or in restricting the scope of a statute. By the same token, an omission or failure to provide for contingencies, which it may seem wise to have provided for specifically, does not justify any judicial addition to the language of the statute. To the contrary it is the duty of the courts to interpret a statute as they find it without reference to whether its provisions are wise or unwise, necessary or unnecessary, appropriate or inappropriate, or well ill-conceived.

239. *Craies on Statute Law*, 7th Edn., at page 69, states that the second consequence of the rule of *casus omissus* is that the statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. In *Construction of Statutes* by Crawford at page 269 in paragraph 169 it is stated that omissions in a statute cannot, as a general rule, be supplied by construction. Thus, if a particular case is omitted from the terms of a statute, even though such a case is within the obvious purpose of the statute and the omission appears to have been due to accident or inadvertence, the court cannot include the omitted case by supplying the omission. This is equally true where the omission was due to failure of the legislature to foresee the missing case. As is obvious, to permit the court to supply the omission in statutes, would generally constitute an encroachment upon the field of the legislature. In construing the Constitution we cannot look beyond the letter of the Constitution to adopt something which would command itself to our minds as being implied from the context. In *State of Tasmania v. Commonwealth of Australia* and *State of Victoria Connor, J.* dealing with the question observed thus:

It appears to me that the only safe rule is to look at the statute itself and to gather from it what is its intention. If we depart from that rule we are apt to run the risk of the danger described by Pollack, C.J., in *Mille v. Solomons*. "If, he says, "the meaning of the language be plain and clear, we have nothing to do but to obey it to administer it as we find it; and, I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation". Some passages were cited by Mr. Glynn from *Black on the Interpretation of Laws*, which seem to imply that there might be a difference in the rules of interpretation to be applied to the Constitution and those to be applied to any other Act of Parliament, but there is no foundation for any such distinction. The intention of the enactment is to be gathered from its words. If the words are plain, effect must be given to them; if they are doubtful, the intention of legislature is to be gathered from the other provisions of the statute aided by a consideration of surrounding circumstances. In all cases in order to discover the intention you may have recourse to contemporaneous circumstances to the history of the law, and you may gather from the instrument itself the object of the legislature in passing it. In considering the history of the law, you may look into previous legislation, you must have regard to the historical facts surrounding

the bringing of law into existence. In the case of a Federal Constitution the field of inquiry is naturally more extended than in the case of a State Statute, but the principles to be applied are the same. You may deduce the intention of the legislature from consideration of the instrument itself in the light of these facts and circumstances, but you cannot go beyond it. If that limitation is to be applied in the interpretation of an ordinary Act of Parliament, it should at least be as stringently applied in the interpretation of an instrument of this kind, which not only is a statutory enactment, but also embodies the compact by which the people of the several colonies of Australia agreed to enter into an indissoluble Union.

240. In *Encyclopaedia of the American Judicial System*. The Constitutional Interpretation by Craig R. Ducat it is stated-that the standard for assessing constitutionality must be the words of the Constitution, not what the judges would prefer the Constitution to mean. The constitutional supremacy necessarily assumes that a superior rule is what the Constitution says, it is not what the judges prefer it to be. (Vide page 973), (emphasis supplied) in judicial tributes balancing the competing interest Prof. Ducat quoted with approval the statement of Bickel at page 798 thus:

The judicial process is too principle-prone and principle-bound - it has to be, there is no other justification or explanation" for the role it plays. It is also too remote from conditions, and deals, case by case, with too narrow a slice of reality. It is not accessible to all the varied interest that are in play in any decision of great consequence. It is, very properly, independent. It is passive. It has difficulty controlling the stages by which it approaches a problem. It rushes forward too fast, or it lags; its pace hardly ever seems just right. For all these reasons, it is, in a vast complex, changeable society, a most unsuitable instrument for the formation of policy.

56. Having given anxious consideration to the question, it can be said that the Tribunal has jurisdiction with respect to "service matters" defined u/s 3(q) of the Act and the contention that in addition to "service matters" mentioned u/s 3(q), the Tribunal can exercise jurisdiction with respect to "recruitment" and "matters concerning recruitment" which pertain to stage prior to matters stated u/s 3(q), is untenable. Section 3(q) quoted:

3. xx xx xx xx xx xx

(q) "service matters", in relation to a person, means all matters relating, to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects-

- (i) remuneration (including allowance), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature

retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

57. Consideration of this provision plainly points out that all the matters mentioned therein apply after a person is appointed to the service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects to items (i) to (v). Any grievance with respect to these matters can be raised by persons "in service" as they relate to them and none else. Therefore, a person who is not in service, cannot raise any such dispute against a person who is in service, meaning thereby, parties must be in service otherwise the Applicant cannot be "a person aggrieved" within the meaning of Section 19 of the Act. Form "1" framed under Article 323-A(2)(c) read with Section 19 of the Act also goes to show that dispute can be raised only by "in service" candidates and not by persons who are not "in service".

58. The necessary consequence of this conclusion, therefore is that a person who is not in service but wants to agitate a service matter in public interest, can do so by invoking the jurisdiction of the High Court under Articles 226/227 of the Constitution of India. Similarly, a person who was a candidate for service but has not been appointed, can also approach the High Court in exercise of the writ jurisdiction. This conclusion is also fortified by many other factors. Article 323-A of the Constitution has not mentioned "appointment" separately. It appears, "recruitment" has been given the meaning of "appointment" that is why it is followed by "condition of service" of the person appointed. Same expressions have been used in the long title of the Act reproduced above. Therefore, the provisions of the Act have to be read in tune with Article 323-A of the Constitution and the title to the Act which help in understanding the intention of the Legislature for enacting the law and extent of the jurisdiction of the Tribunals. There is difference between "recruitment" and "appointment" but some-times "recruitment" is used for "appointment". The Tribunal has been vested with jurisdiction to decide service matters after appointment and not before that.

59. Mere recruitment of a person does not give him any right to appointment. Appointment commences when a person joins the service equal to the offer of appointment by the Appointing Authority. Therefore, "recruitment" and "matters concerning recruitment" are outside the scope of Article 323A of the Constitution of India and Administrative Tribunals Act, 1985 cannot confer more powers on the Tribunals then envisaged in this Article.

60. Consequently, the view taken by the Division Bench of Madras High Court in

Ruban's case (supra) and this Court in Ramesh Chander's case (supra) is the correct view for reasons mentioned in the judgments as well as those recorded above in this judgments. The decisions taking the contrary view, have, with respect, given unrestricted meaning to expressions "recruitment" and "matters concerning recruitment" which, for reasons stated above, they do not deserve. It may be true that the Legislature created Tribunals to adjudicate service disputes but one should not lose sight of the fact that only "service matters" defined u/s 3(q) of the Act, were intended to be decided. While moving the Administrative Tribunal Bill, 1985 in the Lok Sabha, Shri K.P. Singh Deo, Minister of State, Department of Personnel and Administrative Reforms, said:

The tribunals are not going to be parallel High Courts but they will be doing the work of the High Courts as far as problems and cases pertaining to the service conditions are concerned.

See:1985 (1) L.S.D. Col. 98 Quoted by K.I. Vibhute in "Administrative Tribunals and the High Courts: A Plea for Judicial Review.

(Journal of the Indian Law Institute - Vol.29 No. 4 Oct-Dec. 1987).

62. Provisions of Sections 14, 15 and 28 have to be interpreted under the command of Article 323-A of the Constitution which refers to "recruitment" and "condition of service" only. At the cost of repetition, it may be reiterated that "recruitment" has been used in this Article for "appointment". Otherwise, "appointment" ought to "have been mentioned separately. It is well settled that a statute, taking away jurisdiction of court, has to be interpreted strictly. Jurisdiction to decide a matter ought not to be surrendered easily, See: Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, Dhulabhai etc., v. State of Madhya Pradesh and Anr., more so, power of judicial review exercised by High Court under Articles 226/227 of the Constitution of India.

63. Consequently, the preliminary objection raised by the learned Advocate General is rejected and the principle laid down by this Court in Padma Sharma's case (supra) is approved and extended further on the lines laid down in Ruban's case and Ramesh Chander's case (supra).

64. Learned Counsel for the Petitioners contended that University Grant Commission is the apex Body to lay down the standard of education in the country and recognises the degrees awarded by" the Universities. When the University, awarding the degree, is recognised by this Body, it should be recognised by all the Universities in the country and the States for all purposes including admission to various courses and employment under the State. The decision of the Himachal Pradesh University is not placing the B.Ed. degree through Correspondence Course of M.D. University at par with its B.Ed. degree, is totally arbitrary and unreasonable. The decision taken by the State Government is liable to be set aside since it is neither taken in accordance with procedure laid down for the purpose nor based on sound principles. As a matter of fact, it has been taken to block the persons having B.Ed. degree through

Correspondence Course to enter the public employment. The decision has been coloured by the decision of the University Equivalence Committee which is, as a matter of fact, applicable to admission to various courses in the University and is not relevant for public employment. It was also contended that videos discrimination has been made between the two classes one having obtained B.Ed. degree through Correspondence Course and the other by regular studies at the institution -although there is practically no difference between the two.

65. Learned Advocate General submitted that it is the competence of the State to prescribe qualifications as to eligibility for recruitment since it is the right of the employer to lay down qualifications for appointment to the office in question. The State Government can prescribe different qualifications from those prescribed by the Central Government, it may be higher or it may be lower. So far as the Government's decision is concerned, it was contended that the same is based merely on the instructions which are administrative in nature framed for the guidance of the Department and issued under the Executive powers of the State. Even if they have not been followed, the decision cannot be termed illegal and liable to be quashed under Article 226 of the Constitution. Some of the decisions on which reliance was placed by the learned Counsel, may now be discussed.

66. In *Dr. B.L. Asawa Vs. State of Rajasthan and Others*, it has been held that (para 11 p.936):

11. The University of Bihar at Muzafarpur is one duly established by statute and it is fully competent to conduct examinations and award degrees. The Degree of Doctor of Medicine (Forensic Medicine) M.D. (Forensic Medicine) of the University of Bihar is included in the Schedule to the Indian Medical Council Act, 1956 as a degree fully recognised by the Indian Medical Council which is the paramount professional body set up by statute with authority to recognise the medical qualifications granted by any University or Medical Institution in India. A Post-graduate Medical Degree granted by a University duly established by statute in this country and which has also been recognised by the Indian Medical Council by inclusion to the Schedule of the Medical Council Act has ipso facto to be regarded, accepted and treated as valid throughout our country. In the absence of any express provision to the contrary, such a degree does not require to be specifically recognised by other Universities in any State in India before it can be accepted as a valid qualification for the purpose of appointment to any post in such a state. The Division Bench of the High Court was, in our opinion, manifestly in error in thinking that since the Post-graduate degree possessed by the Appellant was not one obtained from the University of Rajasthan, it could not be treated as a valid qualification for the purpose of recruitment in question in the absence of any specific order by the University of Rajasthan recognising the said degree or declaring it as an equivalent qualification. It is common ground before us that the University of Rajasthan does not conduct Post-graduate examinations in the subject of Forensic Medicine and it does not award the degree of M.D. (Forensic Medicine). In order that there should be scope for

declaration of "equivalence" of a qualification obtained from Anr. body, there can be declaration of equivalence only as between a qualification obtained from a body different from the one awarded by the concerned University. When the University of Rajasthan does not conduct any examination for the award of the degree of M.D. (Forensic Medicine), there cannot be any question of declaration of "equivalence" in respect of such a degree awarded by any University. Unfortunately, the State Public Service Commission as well as "the Division Bench of the High Court failed to notice this crucial aspect. We may also point out that the declaration of "equivalence" referred to in Section 23A of the Rajasthan University Act as well as in Clause (vii) of Ordinance No. 65 of the Rajasthan University Ordinance can only be in respect of qualifications other than basic or Post-graduate degrees awarded by other statutory Indian Universities in the concerned subjects. In the case of a Post-graduate degree in the concerned subject awarded by a statutory Indian University, no recognition or declaration of equivalence by any other University is called for. This is all the more so in the case of a medical degree basic as well as Post-graduate that is awarded by a statutory Indian University and which has been specifically recognised by the Indian Medical Council.

67. In *Tata Cellular Vs. Union of India*, it has been held in paras 77 and 81 that:

77. The duty of the Court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality**, namely, *Wednesbury* unreasonableness.

(iii) **Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind*, Lord Diplock refers specifically to one development,

namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention.

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in *Emma Hotels Ltd. v. Secretary of State for Environment*, the Secretary of State referred to a number of factors which legalised him to the conclusion that non-resident's bar in a hotel operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to the conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached this conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R. v. Barnet London Borough Council, ex p. Johnson* the condition imposed by a Local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down.

68. In *V. Ramasamy v. State of Tamil Nadu and Ors.* 1991 Lab. I.C. 330, it has been held in paras 6 and 7 that:

6. Mr. P. Sahmugam, learned Counsel for the Petitioner, would confine his submission only to the aspect of discrimination coming within the mischief of Articles 14 and 16 of the Constitution of India. Learned Counsel for the Petitioner would submit that for filling up the posts of B.T. Grade Headmasters in the Middle Schools, two sources were provided; and in one source, namely, in-service filling up of the posts, the qualification of B.Ed. or Tamil Pandit was recognised as being on par with each other and only in the other source, namely, recruitment from open market or by transfer from Anr. management, the preference was confined only to Tamil Pandits and the State having treated both the categories, namely, B.Ed. and Tamil Pandit as equals for one source for the very same post cannot exclude B.Ed. in the other source, namely, direct recruitment from open market or by transfer from Anr. management and this classification is not at all founded on any intelligible differentia and the differentia has no rational nexus to the objects sought to be achieved by the State in creating the additional posts. In substance, learned Counsel for the Petitioner wants Clause 2(ii) of the impugned Government Order to be struck down as violative of Articles 14 and 16 of the Constitution of India. Our assessment of the position, factual and legal, in the matter obliges us to concur with the submissions of the learned Counsel for the Petitioner. Certain well settled principles which have come to be recognised as

basic on the question of discrimination violative of Articles 14 and 16 of the Constitution of India cannot be lost sight of. When there is a complaint of violation of Articles 14 and 16 of the Constitution of India with reference to a rule or a statutory provision, it must be found out as to whether two tests stand satisfied. The first test is, as to whether the classification on which impugned rule or statutory provision is founded is based on intelligible differentia which distinguishes persons or things grouped together from those left out of the group. The second test is as to whether the differentia in question has a reasonable relation to the object sought to be achieved by the impugned rule or statutory provision and there must be nexus between the basis of the classification and the object intended to be achieved by the impugned rule or the statutory provision. Here the post to be filled up is that of a B.T. Grade Headmaster in a Middle School. Two sources were thought about and chalked out, namely, in-service filling up and direct recruitment from open market or by transfer from Anr. management. For in-service filling up, both B.Ed. and Tamil Pandit were found competent. But, by Clause 2(ii) of the impugned Government order, for direct recruitment in open market or by transfer from Anr. management, B.Ed. was excluded and only a Tamil Pandit has been directed to be preferred. As to why a B.Ed. should be excluded, when the other source of direct recruitment is to be resorted to for the same post is not at all convincingly explained by Respondents 1 and 2. The post is one and the same. With regard to one source, namely, in-service filling up, both B.Ed. and Tamil Pandit were found qualified and competent. They are treated on par. When the other source, namely, direct recruitment from open market or by transfer from Anr. management is resorted to there is apparently every justification and warrant for countenancing and continuing the equality, already recognised in respect of both the categories, namely, B.Ed., and the Tamil Pandit. In the absence of any convincing explanation for conceiving a differentia, which must have a reasonable nexus to the objects intended to be achieved, it is not possible to uphold this differentia either as an intelligible one or as a reasonable one, going out of the mischief of Article 14 and 16 of the Constitution of India. The only reason which we could glean from the counter-affidavit filed on behalf of Respondents 1 and 2 in the writ petition is found in paragraph 3(4) thereof, which runs as follows:

In secondary Schools, the pupils studying in Standards VI to VIII, acquire proficiency in mother tongue (Tamil) as intensive teaching is done by Tamil Pandits in the learning process. Besides, the students learn the other subjects also in Tamil and usage of mother tongue is the main source for effective learning. In Middle Schools (Higher Elementary) Tamil is handled by Secondary Grade Teachers and as such it is imperative and essential to appoint Tamil Pandits in Middle Schools when direct recruitment is made for B.T. Grade Headmasters. This facility makes the pupils to acquire rich knowledge and understanding in subject matters when they are handled by highly competent teachers appointed to improve quality. The Petitioner can appear as a candidate for B.T. Post in High Schools and he has opportunity to get his change. There is a

clear stipulation in the G.O. that a Tamil Pandit should be appointed from open market when it cannot be otherwise filled in.

7. What has been set out in counter affidavit of Respondents 1 and 2 has not found any expression in the impugned Government order. Leaving that alone, and even when we examine and assess what has been averred in the counter-affidavit of Respondents 1 and 2, we must say that it does not make out any intelligible differentia and it does not set out any reasonable nexus between the differentia and the object intended to be achieved. If the object is that the students in the Middle Schools, must learn the subjects in Tamil and imparting of knowledge in the subjects by Tamil Pandits alone would make the students to acquire rich knowledge and understanding in the subjects, as seems to have been declared in the above paragraph in, the counter affidavit of Respondents 1 and 2, then this object ought to have found expression even while delineating the first source by confining that source to only one category, namely, Tamil Pandit. That has not been done. As to why Tamil Pandit alone should be the choice when the second source to the same post is chalked out, is not at all brought forth before us to bring any conviction to our mind. Both B.Ed. and Tamil Pandit are found competent and equals for in-service filling up of the post. It is not even claimed that with regard to the first source, namely, in-service filling up, there is a need to accommodate and encourage B.Eds. who are already in service. Further, as to what extent a Headmaster in a Middle School, his office being what it is, would take up an exhaustive role of imparting knowledge in subjects to the students in Tamil, also does not stand expatiated by Respondents 1 and 2. The differences between the two services, in our view, have no reasonable relation to the nature of the office to which recruitment is to be made and the same cannot be legitimately sustained on the basis of a valid classification. There is absolutely no warrant to give a preferential treatment to Tamil Pandit against B.Ed. in the matter of the second source. There is no reasonable nexus between the differences. No legitimate justification for excluding B.Ed. in the second source has been made out. The learned single Judge, in our view, has not approached and assessed this question from the above angle and this has resulted in his not appreciating this grievance of the Petitioner.

69. In *S. Satyapal Reddy and Others Vs. Govt. of A.P. and Others*, , it has been held in paras 3,4 and 5 that:

3. *Siri K. Madhava Reddy and Shri Gururaja Rao*, learned senior counsel for the Appellants contended that as the Act was made under Entry 35 of List III of the VIIth. Schedule to the Constitution read with Article 246 of the Constitution, the Act receives paramountcy and the Central Government alone is competent to prescribe the qualifications as to the eligibility for recruitment as Assistant Motor Vehicles Inspectors and the power of the State Government to that extent gets eclipsed and the prescription of qualification of Degree in Mechanical Engineering becomes void since it runs in conflict with the qualifications prescribed by the

Central Government, therefore, the State rules become inapplicable. In support thereof, it was further contended that other State Governments had fallen in line in prescribing the qualification of Diploma in Mechanical Engineering prescribed by the Central Government and the State Government of A.P. had not adopted that course. Since the State rule is in conflict with the Central rule, the Central rule would prevail over the State rules, by operation of Article 254 of the Constitution.

4. Shri V.R. Reddy, learned Additional Solicitor General argued that Sub-section (1) of Section 213 of the Act preserves the power to the State Government to appoint an officer or class of officers to implement the Act, Sub-section (4) gives power to the Central Government to prescribe "the minimum qualifications" for appointment as officers or class of officers to such posts under the Act and that would not mean that the State Government having been given the power to appoint the officers, and denuded of their power to prescribe higher qualifications than the one prescribed by the Central Government. There is no conflict between the power exercised by the Central Government under the Act vis-a-vis the power of the State Government under Entry 41 of List II of "the public service" and power preserved to the Governor exercisable under proviso to Article 309 of the Constitution. Therefore, the State rules are not ultra vires.

5. Having given our anxious consideration to the respective contentions, we find that the State's contention merits acceptance. It is seen that marginal note in Section 213 for "appointment of Motor Vehicles Officers" indicates the subject-matter of the section. Sub-section (1) says that the State Government may, for the purpose of carrying into effect the provisions of this Act, establish Motor Vehicles Department and "appoint as officers thereof such persons as it thinks fit" The power of appointment includes the power to select a fit and competent person who it thinks fit to hold the post and would discharge efficiently the functions assigned under the Act. It includes the power to prescribe qualifications to select suitable officers. The Parliament preserved that power to the State Government u/s 213(1) itself by allowing it to appoint the officers whom it finds fit to carry into effect the provisions of the Act. Sub-section (4) gives power to the Central Government, having regard to the object of the Act, by a notification in the Official Gazette "to prescribe minimum qualification" which the officers or class of officers thereof shall possess for being appointed as such officer or to the cadre belonging to the State Government. Under Entry 41 of List II (State List) of VIIth Schedule to the Constitution, the public service includes the services of the officers to be appointed under Sub-section (1) of Section 213 of the Act. No doubt, as contended by the learned Counsel for the Appellants that the Act receives paramountcy, since under Entry 35, the subject under the Act covers the concurrent field. Sub-section (4) of Section 213 also preserves the power to prescribe qualifications higher than that "minimum qualification" prescribed by the Central Government to appoint the "said officers or any class thereof shall possess for being appointed as such.

70. In *G.J. Fernandez Vs. State of Mysore and Others*, it has been held in para 12 that:

12. Taking first the contention with respect to the Code not being followed in the matter of tenders, the question, that arises is whether this Code consists of statutory rules or not. The High Court has observed that the so-called rules in the Code are not framed either under any statutory enactment or under any provision of the Constitution. They are merely in the nature of administrative instructions for the guidance of the department and have been issued under the executive power of the State. Even after having said so, the High Court has considered whether the instructions in the Code were followed in the present case or not. Before however, we consider the question whether instructions in the Code have been followed or not, we have to decide whether these instructions have any statutory force. If they have no statutory force, they confer no right on anybody and a tenderer cannot claim any right on the basis of these administrative instructions. If these are mere administrative instructions it may be open to Government to take disciplinary action against its servants who do not follow these instructions but non-observance of such administrative instructions does not in our opinion confer any right on any member of the public like a tenderer to ask for a writ against Government by a petition under Article 226. The matter may be different if the instructions contained in the Code are statutory rules. Learned Counsel for the Appellant is unable to point out any statute under which these instructions in the Code were framed. He also admits that they are administrative instructions by Government to its servants relating to the Public Works Department. But his contention is that they are rules issued under Article 162 of the Constitution. Now Article 162 provides that "executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws". This Article in our opinion merely indicates the scope of the executive power of the State; it does not confer any power on the State Government to issue rules thereunder. As a matter of fact wherever the Constitution envisages issue of rules it has so provided in specific terms. We may for example, refer to Article 309, the proviso to which lays down in specific terms that the President or the Governor of a State may make rules regulating the recruitment and the conditions of service of persons appointed to services and posts under the Union or the State. We are therefore of opinion that Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive powers of the State. Of course, under such executive power, the State can give administrative instructions to its servants how to act in certain circumstances, but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. It is not in dispute that there is no statute which confers any authority on the State Government to issue rules in matters with which the Code

is concerned; nor has any provision of" the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules. It only provides for the extent and scope of the executive power of the State Government, and that coincides with the legislative powers of the State Legislature. Thus under Article 162, the State Government can take executive action in all matters in which the Legislature of the State can pass laws. But Article 162 by itself does not confer any rule making power on the State Government in that behalf. We are therefore of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore even if there has been any breach of such executive instructions that does not confer any right on the Appellant to apply to the court for quashing orders in breach of such instructions. It is unnecessary for us to decide whether there has been in fact a breach of any instruction contained in the Code with respect to tenders and we do not therefore so decide. But assuming that there has been any breach that is a matter between the State Government and its servant, and the State Government may take disciplinary action against the servant concerned who disobeyed these instructions. But such disobedience did not confer any right on a person like the Appellant, to come to court for any relief based on the breach of these instructions. It is for this reason that we are not referring to the Code, though the High Court did consider whether there was any breach of these administrative instructions and came to the conclusion that there was no breach. In the view we take it is unnecessary for us to consider this, for we are of opinion that no claim for any relief before a court of law can be founded by a member of the public, like the Appellant, on the breach of mere administrative instructions.

71. In Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, it has been observed in para 13 that:

13...We are substantially in agreement with the reasons which have weighed with the Division Bench and the Full Bench in rejecting this contention. It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. Here in the present case it cannot be said that the view taken by the Government of Andhra Pradesh that US and OCE certificates of the Osmania Engineering College were not equivalent to US or OCE

diploma of the College of Engineering, Guindy or LCE, LME or LEE diplomas of any other recognised institution suffered from any of these infirmities. It was based on the recommendations of an expert high powered body like the State Board of Technical Education consisting of distinguished administrators, educationists and technical experts against whom nothing could be alleged on behalf of the Petitioners/Appellants. The State Board of Technical Education included inter alia Principals of different engineering colleges in the State, the Secretary of the Regional Committee of the All India Committee on Technical Education, retired Chief Engineers as also Chief Engineers in office who would be expected to be familiar with the academic standards and practical content of the different qualifications and the decision taken by the Government of Andhra Pradesh on the basis of the recommendation of the State Board of Technical Education could not be regarded as unreasonable or perverse or manifestly wrong nor could it be said to be mala fide or based on extraneous or irrelevant considerations. Indeed, the Government of Andhra Pradesh could not do better than rely on the recommendation of the State Board of Technical Education. The Full Bench as well as the Division Bench of the Andhra Pradesh High Court have in fact shown in their respective judgments, on a comparison of the duration and content of the respective courses, that US and OCE certificates of the Osmania Engineering College were, both from the point of view of academic learning as also from the point of view of practical experience, inferior to US or LCE diploma of the College of Engineering, Guindy or LCE, LME or LEE diploma of any other recognised institution. It may also be pointed out that even in the erstwhile State of Hyderabad itself, US and OCE certificates of the Osmania Engineering College were not treated on a par with LCE, LME or LEE diploma. Firstly, an Overseer holding US or UCE certificate of the Osmania Engineering College was required to put in at least six years' service before he could be eligible for promotion as Supervisor while a Sub-Overseer holding LCE or LME diploma did not have to put in any minimum qualifying service for the purpose of promotion as Supervisor. Secondly, US or OCE certificate of the Osmania Engineering College was regarded as sufficient qualification only for recruitment to the post of Sub-Overseer, while LCE or LME diploma qualified for recruitment not only to the post of Sub-Overseer but also to the post of Supervisor. It is, therefore, not possible to overturn the decision of the Government of Andhra Pradesh denying equivalence of US and OCE certificates of the Osmania Engineering College with LCE, LME or LEE diplomas. It may be noted that the Central Government also affirmed the decision of the Government of Andhra Pradesh by its letter dated 17th March, 1966. Even if it be assumed that the Central Government had the exclusive power under the States Reorganisation Act, 1956 to bring about integration of services in the reorganised State of Andhra Pradesh, this decision of the Central Government contained in the letter dated 17th March, 1966 is sufficient to meet the requirement of the statute and it must be upheld for the same reasons as the decision of the Government of Andhra Pradesh. There was a further ground of attack levelled against the decision of the Central Government, albeit faith heatedly, and that was that the decision of the Central Government was arrived

at solely on the basis of the communication dated 9th January, 1965 addressed by the Additional Secretary to the Government of Andhra Pradesh to the Secretary to the Government of India, Ministry of Home Affairs without giving any opportunity to the non-graduate Supervisors from the erstwhile Hyderabad State to put forward their case. This charge is plainly unsustainable as it is evident from paragraph 9 of the affidavit dated 27th July, 1970 filed by K.P. Singh, Under Secretary to the Government of India, Ministry of Home Affairs in reply to Writ Petition No. 385 of 1969, and it can hardly be disputed, that the representations made by the non-graduate Supervisors from the erstwhile Hyderabad State against the decision of the Government of Andhra Pradesh contained in the Order dated 3rd October, 1960 were forwarded to the Central Government and it was after giving due consideration to these representations on the basis of the recommendations of the Advisory Board which consisted of experts, that the Central Government affirmed the decision of the Government of Andhra Pradesh by its letter dated 7th March, 1966. The present contention of the Petitioners/Appellants must, therefore, be rejected.

72. In Baldev Raj Sharma Vs. Bar Council of India and Others, , it has been held in para 3 that:

3. On April 26, 1983 the Bar Council of Punjab and Haryana denied enrolment to the Petitioner as an advocate on the ground that the Petitioner had not fulfilled the conditions laid down in Rule 1(1)(c) of the Rules of the Bar Council of India framed u/s 7(h) and (i), Section 24(1)(c)(iii) and (iii-a) and Section 49(1)(d). The detailed grounds of refusal supplied to the Petitioner by the Bar Council of Punjab and Haryana state that the Petitioner had obtained his Bachelor of Laws degree from the Kurukshetra University as a result of the examination held in April, 1980 as a private candidate. It was an L.L.B (Academic) degree obtained in two years" study as a private candidate. The third year of law was pursued by him as a regular student from VSSD College, Kanpur of the Kanpur University from which institution he obtained the professional degree. It was further stated that the Petitioner had not fulfilled the conditions laid down in the provisions detailed earlier as he had passed his two years" law course as a private candidate from Kurukshetra University and the third year law only by regular attendance at the VSSD College Kanpur. It appears that the State Bar Council, upon receiving the application of the Petitioner for enrolment as an advocate, obtained the opinion of the Bar Council of India and in conformity with that opinion the State Bar Council has refused enrolment. Section 24(1)(c) provides as follows:

24. Persons who may be admitted as advocates on a State roll.-(1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the-following conditions, namely:

(c) he has obtained a degree in law-

(i) * * *

(ii) * * *

(iii) after the 12th day of March, 1967, save as provided in Sub-Clause (iii-a), after undergoing a three year course of study in law from any University in India which is recognised for the purpose of this Act by the Bar Council of India; or

(iii-a) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India.

Sub-Clause (iii) of Clause (c) of Section 24(1) entitled a person to be admitted as an advocate on a State roll if he has obtained a degree in law after March 12, 1967 after undergoing three years" of study in law in any University in India recognised for the purposes of the Advocates Act by the Bar Council of India. An exception to this is provided by Sub-Clause (iii-a) of Clause (c), under which a person is qualified for admission as an advocate if he has obtained a degree in law after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India recognised for the purposes of the Act by the Bar Council of India. The Petitioner obtained a degree of Bachelor of Laws (Professional) from the Kanpur University in the examination of 1981. He had pursued the third year course only of study pertaining to that degree as a regular student of the VSSD College, Kanpur, in Kanpur University. The Bar Council of India has framed Rules under the Advocates Act, 1961. Rule 1(1)(c) of Part IV of the Bar Council of India Rules, 1975 provides that except as provided in Section 24(1)(c)(iii-a) of the Advocates Act a degree in law obtained from any University in the territory of India after March 12, 1967 shall not be recognised for the purposes of Section 24(1)(c)(iii) of the Act unless the conditions specified there are fulfilled, including the condition "that the course of study in law has been by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University". These rules were replaced by a fresh set of rules in 1984 and the new Rule 1(1)(c) is almost identical. The rule clearly requires that the course of study in law should have been by regular attendance for the requisite number of lectures, tutorials and moot courts and practical training. The rule envisages that for the entire period of the law course there must be a regular attendance of the student before he can satisfy the conditions necessary for enrolment as an advocate under the Advocates Act, 1961. The Rules amplify what is intended in Section 24(1)(c)(iii) of the Act. The three years" course of study envisaged by that sub-clause in the Act intends that the three years" course of study in law must be pursued by maintaining regular attendance. We are unable to say that there is any inconsistency between the Act and the Rule. So also in a case falling under Clause (iii-a) of Section 24(1)(c) of the Act, a course of study in law must be pursued for not less than two academic years in terms of that sub-clause and Rule 1(1)(c) will apply to such a

case also. There is a substantial difference between a course of study pursued as a regular student and a course of study pursued as a private candidate. The policy underlying the relevant provisions of the Bar Council Rules indicates the great emphasis laid on regular attendance at the law classes. The conditions are specifically spelt out when the Act is read along with the Rules. When so read, it is plain that a candidate desiring enrolment as an Advocate under the Advocates Act must fulfil the conditions mentioned in Section 24(1)(c)(iii) or Section 24(1)(c)(iii-a) read with Rule 1(1)(c) of the Bar Council of India Rules, 1975. In the present case the Petitioner failed to do so. His application for enrolment was rightly rejected.

73. In *Bar Council of India and another Vs. Aparna Basu Mallick and others*, it has been held that (paras 7, 12 and 14):

7. The Petitioner claims to have undertaken a three-year L.L.B. (Professional) course from May 1975 and to have appeared in the examinations held in 1975, 1976 and 1978 and secured a degree in 1978. According to him the question paper setters and the examiners of the answer books were the same for non-institutional as well as institutional candidates and no separate marks were reserved for internal assessments. Thus according to the Petitioner the yardstick for assessing the worth of the candidates belonging to both the classes was the same and hence any discrimination on the basis of one belonging to the non-institutional category would fall within the mischief of Article 14 of the Constitution.

12. We may at this stage notice a decision of this Court rendered in *Baldev Raj Sharma v. Bar Council of India*. The factual background in which that decision was rendered was that the Petitioner therein had obtained the L.L.B. degree (academic) as a private candidate from the Kurukshetra University. That was a course of two years' duration. He thereafter joined the L.L.B. (Professional) course in the third year as a regular student of Kanpur University. After obtaining the degree, he sought enrolment as an advocate which was refused by the Bar Council of Punjab & Haryana on the ground that he did not fulfil the requirements of Rule 1(1)(c) and Section 24(1)(c)(iii) or (iii-a) of the Act. The Petitioner thereupon moved this Court under Article 32 of the Constitution. This Court after referring to the relevant provisions namely, Section 7(h) and (i), Section 24(1)(c)(iii) and (iii-a) and Section 49(1)(d) of the Act read with Rule 1(1)(c) of the Rules held that the said Rule envisaged regular attendance of the student for the entire period of the law course before he can seek enrolment as an advocate. This Court further observed that the Rules merely amplified what was intended by Section 24(1)(c)(iii), namely, the three years' course of study in law must be pursued by maintaining regular attendance. The Court clearly negated the suggestion that there was any inconsistency between the provisions of the Act and the Rules. This was because in the opinion of the Court there was a substantial difference between the course of studies pursued as a regular student and the course of study pursued as a private candidate. The policy underlying

the provisions of the Rules make it clear that considerable emphasis is laid on regular attendance at the law classes and this is manifest from the plain language of the provisions referred to earlier. Since the Petitioner had failed to show that he had complied with the requirements of the said Rules, the Court observed that the action refusing to enrol him was unassailable.

14. Now u/s 7, one of the functions of the Bar Council of India is to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect the Universities. This power of recognition of Universities is conferred where the degree of law of that University entitles the degreeholder for enrolment as an advocate. u/s 24(1)(c)(iii) which is relevant for this purpose, a person shall be qualified to be admitted as an advocate on a State roll if he fulfils the conditions of having undergone a three year course of study in law from any University in India which is recognised by the Bar Council of India. Sub-section (3) of Section 24 is an exception clause to Sub-section (1) as it begins with a non-obstante clause which entitles a person to be enrolled as an advocate under special rule made in that behalf. No such rule was relied upon as having been made under Sub-section (3) of Section 24. Section 49(1)(d) empowers the Bar Council of India to make rules which may prescribe the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. If the qualification of a degree in law is essential for being qualified to be admitted as an advocate on a State roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by Universities in the country. On a conjoin reading of these provisions of the Act with Rule 1(1)(c) in Part IV of the Rules which prescribe the standards for legal education and recognition of degrees in law as well as admission as advocates, it is difficult to understand how one can say that the said Rule is inconsistent with any of the provisions of the Act. What Rule 1(1)(c) requires is that the course of study in law must be completed by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University. As pointed out earlier, this Court in Baldev Raj Sharma case pointed out that there was a substantial difference between a course of studies pursued as a regular student and the course of studies pursued as a private candidate. The policy underlying the relevant provisions of the Rules is to lay emphasis on regular attendance of the law classes. It is, therefore, clear that a candidate desiring enrolment as an advocate must fulfil the conditions set out under the relevant clause of Section 24 read with Rule 1(1)(c) of the Rules. In the present case since both the candidates admittedly did not pursue any regular course of study at any college recognised by the University by attending the law classes, Lectures, tutorials and moot courts, they cannot be said to have complied with the requirements for enrolment as an advocate. In that view of the matter we think that the view taken by the Calcutta High Court in *Aparna Basu Mallick v. Bar Council of India* is erroneous.

74. In *J. Ranga Swamy Vs. Government of Andhra Pradesh and Others*, , it has

been observed in para 6 of the judgment that:

6. So far as the second plea is concerned, admittedly, the Petitioner does not have, while the Respondent has, a doctorate in nuclear physics. The plea of the Petitioner is that, for efficient discharge of the duties of the post in question, the diploma in radiological physics (as applied in Medicine) from the Bhabha Atomic Research Centre (BARC) held by him is more relevant than a doctorate in nuclear physics. It is submitted that "in all corresponding posts elsewhere, a diploma in radiological physics is insisted upon and that, even in the State of Andhra Pradesh, all other physicists working in the line, except the Respondent, have the diploma of the BARC. It is not for the Court to consider the relevance of qualifications prescribed for various posts. The post in question is that of a Professor and the prescription of a doctorate as a necessary qualification therefore is nothing unusual. Petitioner also stated before us that to the best of his knowledge, there is no doctorate course anywhere in India in radiological physics. That is perhaps why a doctorate in nuclear physics has been prescribed. There is nothing prima facie preposterous about this requirement. It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the Petitioner and decide or direct what should be the qualifications to be prescribed for the post in question. It will be open to the Petitioner if so advised, to move the college, university, Government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in nuclear physics is so absolutely irrelevant for the post in question as is sought to be made out by the Petitioner, the authorities concerned will take expeditious steps to revise the necessary qualifications needed for the post appropriately. But, on the qualifications as they stand today, the Petitioner is not eligible to the post and cannot legitimately complain against his non-selection.

75. The University Grants Commission has come into being under the University Grants Commission Act, 1956. The Constitution of India vests Parliament with exclusive authority in regard to "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination Universities, both old and new. University Grants Commission as a corporate body not only looks into the financial requirements of the Universities but has jurisdiction to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission acts as an expert body to advise the Central Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities. The Commission has various powers and multifarious functions u/s 12 of the Act it can inspect University and make recommendations to it where ever it is found wanting. Kind of education and the standard thereof is

under the vigil of this Body and it is, therefore, obvious that the standard of education of all the Universities established by law in India, is at par with each other whatever may be the nature of the courses and kind of study - regular or by Correspondence Course.

76. By now, receiving of education has reached the status of fundamental right under Article 21 of the Constitution. Without education one cannot be a perfect citizen understanding and enjoying the fruits of economic and social justice. Education makes one a real citizen. In case education does not help a citizen in securing employment, it does not serve any real purpose and this right of the citizen becomes a mere illusion. The equality clause contained in Article 14 requires that all persons should be treated alike under like circumstances and conditions. Equal have to be treated equally and unequal ought not to be treated equally. Article 16 provides for equality of opportunity in matters of public employment, while Article 21 gives protection to life and personal liberty. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Articles 39, 41 and 42 and they include affording of opportunity and facilities in all facets of life including educational facilities and opportunity to employment under the State so that life does not become a mere existence. They must secure means of livelihood so that they lead a meaningful life.

77. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens have the right to adequate means of livelihood. Article 41 provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right of work in cases of unemployment and of undeserved want. There is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work within the available resources.

78. In *Miss. Mohini Jain Vs. State of Karnataka and others*, the apex Court has observed that (paras 7 to 14):

7. It is no doubt correct that "right to education" as such has not been guaranteed as fundamental right under Part III of the Constitution but reading the above quoted provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.

8. The preamble promises to secure justice "social, economic and political" for the citizens. A peculiar feature of the Indian Constitution is that it combines social and economic rights along with political and justiciable legal rights. The preamble embodies the goal which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined an object of the State under Article 38 of the Constitution. Can the objective which has been so prominently

pronounced in the preamble and Article 38 of the Constitution be achieved without providing education to the large majority of citizens who are illiterate. The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teeming-million who are illiterate. It is only the education which equips a citizen to participate in achieving the objectives enshrined in the preamble. The preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The directive principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings-forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people-, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises "Education shall be directed to the full development of the human personality..." Article 41 in Chapter IV of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right...to education...". Although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations. We may quote the words of Dr. Ambedkar in that respect:

In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country." (C.A.D. Vol. VII p.476).

9. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which; is illiterate.

10. This Court has interpreted Article 21 of the Constitution of India to include the right to live with human dignity and all that goes along with it. In *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others*, this Court elaborating the right guaranteed under Article 21 of the Constitution of India held as under But the question which arises is whether the right to life is limited only to protection of limb faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

11. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, this Court held as under:

This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State -neither the Central Government nor any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essential.

12. "Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

13. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other, rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

14. The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the

citizens. The educational institutions must function to the best advantage of the citizens....

79. This decision was followed by this Court in *H.P. State Recognised and Aided Schools Managing Committee, and Ors. v. State of H.P. and Anr.* (Civil Writ Petition No. 413/89, decided on September 9, 1992) which was confirmed by the apex Court in *State of Himachal Pradesh v. H.P. State Recognised and Aided Schools Managing Committees and Ors.* (1995 (3) Scale 65), some paras of which may be usefully referred to (paras 12, 13 and 14) (p. 404-405):

12. Right to education is a fundamental right guaranteed under Part III read with Part IV of the Constitution of India. This Court in *Miss. Mohini Jain Vs. State of Karnataka and others*, held as under:

We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions-whether state-owned or state-recognised in recognition of their "right to education" under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution.

13. Mohini Jain's case came for consideration before a Constitution Bench of this Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, wherein Jeevan Reddy, J. speaking for the Court observed as under:

In Mohini Jain the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words...In the above state of law, it would not be correct to contend that Mohini Jain was wrong insofar as it declared that "the right to education flows directly from right to life.

14. The Constitution Bench, emphasising the constitutional policy as disclosed by Articles 41, 45 and 46 read with Article 21 of the Constitution of India, held as under:

Be that as it may, we must say that at least now the State should honour the command of Article 45, it must be made a reality at least now. Indeed, the National Education Policy 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education upto the age of 14 years...The

right to freedom is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development.

80. In the aforesaid background, the right to education will become meaningless in case State decisions aim at segregating candidates unreasonably and unjustifiably for possessing degrees through Correspondence Course and regular course and reject one category against the other. Assuming that the State can prescribe qualification as to eligibility for recruitment, however, its action has to be in consonance with Articles 14, 16 and 21 of the Constitution of India. It cannot make classification of citizens for the purpose of employment by laying down qualification and criteria which are illogical, arbitrary and harsh. Its decision should not be based on extraneous or irrelevant considerations or actuated by mala fide or perverse or manifestly wrong approach.

81. Similarly, Universities have to re-cast their rules and regulations keeping in mind that the universal education imparted by various Universities in the country is available to all and the benefits of education should be similarly available to them. There should be free flow of education and its benefits. Of course, certain beneficial provisions favouring the weaker sections of the society may be legitimately resorted to. The main sources for imparting education, amongst others, are the Universities, Colleges and Schools, either run by the Government or by private managements. Many sections of the society are still handicapped in pursuing their studies at its various levels for multifarious reasons. It is not possible for all to acquire qualification by joining the institutions regularly. In order to extend educational facilities to such persons and to achieve the object of universal education, Correspondence Courses have been started by various Universities. Independent Universities have also been established for this purpose, however, standard of education imparted through Correspondence Courses has the approval of experts and the University Grant Commission.

82. Since it was vehemently urged by the learned Counsel for the State that there is marked difference between the education received by attending the course regularly and doing it by distant education standard of the two being different, it is necessary to refer to the Prospectus of the Indira Gandhi National Open University, established under the Indira Gandhi National Open University Act, 1985, and the Prospectus of the School of Education, Correspondence Cell, M.D. University, Rohtak.

The Indira Gandhi National Open University Act, 1985

The following Act of Parliament received the assent of the President on the 2nd September, 1985, and was published in the Gazette of India, (Extra), Part II Section 1, No. 63, dated September 3, 1985/Bhadra 12, 1907.

Act No. 50 of 1985

An Act to establish and incorporate an open University at the national level for

the introduction and promotion of open University and distance education system in the educational pattern of the country and for the co-ordination and determination of standards in such systems.

1. xx xx xx

2. xx xx xx

3. xx xx xx

4. The objects of the University The objects of the University shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage the Open University and distance education systems in the educational pattern of the country and to co-ordinate and determine the standards in such systems, and the University shall, in organising in activities, have due regard to the objects specified in the First Schedule.

THE FIRST SCHEDULE (See Section 4) The Objects of the University

1. The University shall endeavour through education, research, training and extension to play a positive role in the development of the country, and based on the rich heritage of the country, to promote and advance the culture of the people of India and its human resources. Towards this end, it shall:

(a) strengthen and diversify the degree, certificate and diploma courses related to the needs of employment and necessary for building the economy of the country on the basis of its natural and human resources;

(b) provide access to higher education for large segments of the population and in particular, the disadvantaged groups such as those living in remote and rural areas including working people, housewives and other adults who wish to upgrade or acquire knowledge through studies in various fields;

(c) promote acquisition of knowledge in a rapidly developing and changing society and to continuously, offer opportunities for upgrading knowledge, training and skills in the context of innovations, research and discovery in all fields of human endeavour;

(d) provide an innovative system of university level education, flexible and open, in regard to methods and pace of learning, combination of courses, eligibility for enrolment, age of entry, conduct of examination and operation of the programmes with a view to promote learning and encourage excellence in new fields of knowledge;

(e) contribute to the improvement of the educational system in India by providing a non-formal channel complementary to the formal system and encouraging transfer of credits and exchange of teaching staff by making wide

use of texts and other software developed by the University;

(f) provide education and training in the various arts, crafts and skills of the country, raising their quality and improving their availability to the people;

(g) provide or arrange training of teachers required for such activities or institutions;

(h) provide suitable postgraduate courses of study and promote research;

(i) provide the counselling and guidance to its students; and

(j) promote national integration and integrated development of the human personality through its policies and programmes.

2. The University shall strive to fulfil the above objects by a diversity of means of distance and continuing education, and shall function in co-operation with the existing Universities and Institutions of higher learning and make full use of the latest scientific knowledge and new educational technology to offer a high quality of education which matches contemporary needs.

The Rohtak University Act. 1975

Received the assent of the Governor of Haryana on the 21st August, 1975 and was published in the Haryana Gazette, (Extra), Legislative Supplement, Part 1, dated August 25, 1975/Bhadra 8, 1897.

Haryana Act No. 25 of 1975

An Act to establish and incorporate a unitary teaching and residential University at Rohtak for the encouragement of inter-disciplinary higher education and research with special emphasis on studies of Life Sciences and Environmental and Ecological Sciences.

SCHOOL OF EDUCATION, CORRESPONDENCE CELL M.D. UNIVERSITY ROHTAK

Keeping in line with the spirit of the Open University and in accordance with the National Policy of Education which lays great emphasis on continuing education and distance education, Maharishi Dayanand University has decided to start the Bachelor of Education Programme by correspondence with effect from the session 1988-89. Admission is open to candidates from all over the country who might otherwise fail to enter Colleges of Education for various reasons. The duration of the course is one year, the programme being identical with that pursued by regular internal students.

Criteria and Procedure for Admission Eligibility

Admission is open to candidates from all over India, without any restriction of domicile, who have passed B.A./B.Sc./B.Com./M.A./M.Sc./M.Com. Examination from M.D. University, Rohtak or any other examination recognised as equivalent thereto obtaining 40% marks.

Academic Calendar

The duration of the Academic Session for the course will be one year from July 1988 to June 1989.

xxx xxx xxx xxx 2. The lessons will be despatched

in four instalments as under:

1st Instalment In the month of July. 2nd Instalment In the month of October
3rd Instalment In the month of January 4th Instalment In the month of March

NOTE: Instalments of lessons will be sent or delivered at the University Counter only after receipt of the fees for the respective terms. The candidature of the defaulters will stand cancelled.

xx xx xx xx xx

Medium of Instruction

The medium of instruction will be both English and Hindi. The candidates may opt for any one of them. The option once exercised in this regard will not be changed.

CHANNELS OF INSTRUCTION:

1. Lesson Scripts

The preparation of instructional material and its timely despatch to the students is crucial to the success of the entire programme of education through correspondence. To achieve this end, the full syllabus in each paper is divided into integrated units for the preparation and supply of lessons to the students in time. The lessons are written by the best available teachers or by a team of three to four teachers selected on all India basis. The panel of lesson writers is drawn by a Committee consisting of members from the University Teaching Departments and teachers from Affiliated Colleges.

The lessons are written and presented in a manner and style which, without lowering the academic standards, meets the requirements of the students. The lessons are up-dated in the light of the latest development in the respective subjects.

At the end of every lesson questions are given to the students for self-testing on the subject.

2. Personal Contact Programme (PCP)

The instruction through written lessons is supplemented by Personal Contact Programme arranged at different places in and outside Haryana. Through these programmes the mind of the students is exposed to direct contact with teachers. The contact Programme provides for lectures tutorials, seminars and other forms of discussion. The Programmes are arranged in the areas where accommodation

is available and the concentration of the students is maximum. The place, date and time of the P.C.P. will be intimated to the students well in advance.

3. Response Sheets.

The first set of, lessons is despatched to the students within two months of date of the admission. If there is any discrepancy in this regard, the

students are advised to write immediately to the Superintendent-Incharge, Correspondence Cell, M.D. University, Rohtak.

To make the teaching and learning process effective, and to secure that the students have understood the lessons, they are required to write answers to the questions sent with the lessons and send the same to the Superintendent-Incharge, Correspondence Cell before they receive the next instalment.

IN ORDER TO-QUALIFY FOR UNIVERSITY EXAMINATION A STUDENT MUST SUBMIT ATLEAST 60% RESPONSE SHEETS WITHIN THE STIPULATED PERIOD.

The response sheets received from the students are properly evaluated and despatched to the students with corrections, remarks and suggestions for improvement.

The submission of response sheets by the students is essential to the informal system of teaching. It provides feed-back to the teachers and enables them to assess the students' grasp of the subject. The method also enable the students to know how to organise the material and make improvement. The two-way communication between the teachers and the students will open avenues for the betterment of both the students and the system.

To strengthen the process further, the help of other aids and techniques may also be provided to the students from time to time.

COURSES OF STUDY

Paper-I

Education in the Emerging Indian Society.

Max. Marks: 100

Time : 3hrs

Unit-1. Relating Education to Philosophy.

Selected Schools of Philosophy (Idealism), Realism, Naturalism, Pragmatism) and their educational implications.

Unit-2 Education - its aims in modern context:

(a) Concept of education, discrimination between education, training, instruction, schooling and indoctrination.

(b) Types of education - formal, informal and non-formal.

(c) Aims of education relevant to modern Indian Society.

Unit-3. Education and present day Indian Society.

(a) Education as an instrument of social change: Concept of social change, different aspects of social change, factors effecting social changes in India.

(b) Role of the teacher in bringing social change.

(c) School as a sub-social system.

(d) School and community relationship and programmes of a community school.

(e) Areas of school and community collaboration.

Unit-4. Education, planning and national development:

(a) Meaning of national development.

(b) Role of planning in economic development.

(c) Role of education in economic development.

(d) Education as human capital.

Unit-5 Education " in relation to problems of environment and population:

(a) Components of environment pollution.

(b) Deformation of environment and its effects.

(c) Methods of improving environment and the role of teacher.

(d) Population education need and importance.

Unit-6 Education for national integration and international understanding:

(a) Meaning of nationalism.

(b) Education and nationalism.

(c) Role of the teacher in national integration and international understanding.

(d) Role of education for international understanding.

Paper-II

Education Psychology. Max. Marks: 100 Time : 3 hrs.

1. Educational Psychology, its scope and importance for the teacher.

2. Psychology of development: Learner's growth (Intellectual, social and emotional) and development with special reference to Indian adolescents.

3. Psychology of learning: concept of learning, characteristics of acquired behaviour, how learning takes place. Iborndike's connectionism, Pablov's classical conditioning. Skinner's operant conditioning and Gestalt's theory.
4. Psychology motivation, meaning and concept of motivation, technology and devices motivating the learner.
5. Intelligence, the concept and its definition, theories (Spearman's Two Factor Theory and Thurstone Group Factor Theory). Measurement of intelligence, uses and application of intelligence tests.
6. Personality, its meaning, nature and assessment.
7. Education of exceptional children, backward, retarded, gifted and creative.
8. Elementary Statistics in Education: Graphical, representation of data, Mean, Median, Mode, Standard Deviation and Correlation (Rank difference method only).

Paper-III(A) Indian Education System Structure and Problems

Max. Marks: 50 Time : 3 hrs.

Unit-1 Primary Education, Problems of Wastage and stagnation, Universilisation and organising non-formal programmes for drop-outs.

Unit-2 Secondary Education, Structure and its Organisation. General Problems Vocationalization of secondary Education and implication.

Unit-3 Teacher Education at various levels of Education. Pre-service and in-service education. Measures for qualittitative improvement of teacher Education.

Unit-4 Adult, continuing, Lifelong and distance Education, Need, Problems, agencies and materials.

Unit-5 Some emerging problems:

- (a) Public Schools and their future.
- (b) Religious and Moral Education.
- (c) Women Education and Co-education.
- (d) Population Education.
- (e) New Education Policy.

Paper-III (B) One of the Options given below Max. Marks: 50 Time: 3hrs.

List of Option offered

1. Educational and Vocational Guidance.
2. Audio-visual Education.
3. Adult & Continuing Education.

4. Curriculum and Text Books.

Paper IV

Essential of Teaching Learning

Max. Marks:50 Time : 3 hours.

Unit-1 Concept of Teaching:

Definitions of teaching, variables of teaching relationship between teaching and learning. Teaching Models Glassers, Basic Model, Enquiry Training Model, Concept attainment model.

Unit-2 Principles of Teaching:

General principles of teaching, Psychological principles of teaching, maxims of teaching.

Unit-3 Educational Technology:

Meaning, concept and scope of educational technology, Types of educational technology in teaching learning.

Unit-4 Approaches and Strategies:

system approach programmed learning, principles of programmed learning, styles of programming (linear, branching and Mathetics), preparation, writing, try out and evaluation of programmes.

Unit-5 (A) Microteaching-concept and significance ,microteaching cycles, practising selected teaching skills such as narration questioning probing, presentation and feed back through microteaching, session, Indian Model of microteaching.

(b) Simulated teaching, concept, significance and procedure of simulated teaching.

(c) Interaction, analysis, procedure with respect to the Flanders 10 category system, practice in coding and decoding.

(d) Action research strategy and its uses for behaviour modification - of teachers and other functionaries.

Unit-6 Lesson Planning Need and importance of lesson planning.

Unit-7 Audio Visual Aids:

(i) Need and importance of A.V. aids, types of A.V. aids, principles of selection, precautions and effective use of A.V. aids.

(ii) Use of hardware and software in education consisting of simple pictures, charts, maps and electronic gadgets such as Over-Head Projects, Epidiascope, Radio and Audio Materials, T.V. Video Material and computers. Software such as simple book format Modules and programmed learning packages.

Paper V & VI

Contempt-cum-Methodology of Teaching Subject (1) and Teaching Subject (2)

Max. Marks: 100 Time: 3 hrs. (for each paper)

Subjects offered

Group A English, Hindi

Group B Mathematics and Commerce

Group C Life Sciences

Group D Physical Sciences and Social

Sciences.

The candidates shall choose two subjects, one each from the separate groups out of the four mentioned above for the Methodology of Teaching. One of the subjects for these papers shall be the same as the candidate offered for his/her qualifying degree examination as compulsory/optional/subsidiary subject provided that the candidate studied it for at least 2 years.

Paper VII

Black Board Writing Max. Marks: 20

Paper VIII

Work Experience Max. Marks: 80

(Any two of 40 marks each selecting one from Group A and one from Group B).

Every student shall have to offer one activity from each group i.e., A & B out of the following and will be required to keep record of the work done during the session. Suggested areas of work experience are given below:

Activities offered

Group-A

1. Vegetable Growing.
2. Growing of flowers.
3. Making Jam, Jellies and Pickles.
4. Adult Literacy.

Group-B

1. Embroidery.
2. Knitting.
3. Preparing teaching aids (10 teaching aids to be prepared).

4. Working with the community.

Evaluation

For the evaluation of the performance in paper VII & VIII, the students will produce their Work Report and the items prepared by them to the Examiner at the time of examination of Skill in Teaching.

Paper IX

Practice Teaching Max. Marks 200 (100 for each subject)

In addition to the above theory/practical papers, the students will be required to undergo training in teaching practice. Every candidate will teach at least 40 lessons, 20 lessons in each subject during the teaching practice. He/she will maintain a record of these lessons. The subject selected for teaching practice should be the same as offered from Group ABCD for papers V & VI above.

The selection of the University Centres for Teaching Practice will depend on the concentration of students and the availability of schools in the area(s) concerned.

Guidelines for Selecting the Training Subjects

Teaching subjects means the subjects offered by the candidate for paper V & VI.

Only those candidates will be allowed to offer Social Sciences as teaching subjects who have taken their Qualifying Examination in any of the following subjects-

History, Political Science/Public Administration, Economics, Sociology.

A candidate will be allowed to offer Life Sciences as teaching subject if he/she has passed the Qualifying Exam. with Agriculture or Zoology/Botany.

A candidate will be allowed to offer Physical Sciences as teaching subject if he/she has passed the. Qualifying Exam, with Physics, Chemistry and Mathematics.

83. From the perusal of the Object and Reasons of Indira Gandhi National Open University and the Object and Reason for establishing School of Education Correspondence Cell, M.D. University, Rohtak, it would be clear that a salutary object is sought to be achieved by the establishment of the Indira Gandhi National Open University and the starting of Correspondence Course in B.Ed. by M.D. University, Rohtak. The standard of education, cannot be called in any way lesser than available in other Universities or regular courses. Rather, it appears that it is higher and the nature of education being imparted is decidedly more useful and practical. Although the decision of the Equivalence Committee of the Himachal Pradesh University is relating to admission in this University, yet the fact remains that the facts taken into consideration are neither reasonable nor in consonance with the spirit of universal education. More over, the Equivalence Committee had hardly any justification to compare the B.Ed. degree of Rohtak University by Correspondence Course when this kind of Course has not been

started by the Himachal Pradesh University. The State Government has been greatly influenced by this decision and the factors taken into consideration for pointing out the dis-similarities in obtaining the degree through Correspondence Course and regular course are not based on any logic, reason and really acceptable criteria. The classification of candidates on the basis of these degrees obtained through Correspondence Course and regular course, is irrational, perverse and manifestly wrong. The decision is violative of Articles 14, 16 and 21 of the Constitution of India and is liable to be set aside. The decisions in Baldev Raj Sharma Vs. Bar Council of India and Others, ; and Bar Council of India and another Vs. Aparna Basu Mallick and others, have no application to the present case since the decisions in these cases are based on the statutory requirement.

84. The contention that the decision of the Government is administrative in nature flowing out of Article 162 of the Constitution, is hardly acceptable. Assuming that the decision is administrative in nature, however, it has been settled by catena of decisions by the apex Court that even an administrative decision affecting the individuals is liable to judicial review, in case it is irrational, unreasonable, harsh, perverse, violating provisions of the Constitution or suffers from procedural impropriety etc. etc.

85. Finally, it is noticeable that this decision of the Equivalence Committee has not been accepted by the Government nor it has been processed in accordance with the requirement of the rule. Without the acceptance of the recommendations of the Equivalence Committee, implementation of the decision as such is wrong and does not have any effect.

86. No other point was urged by the learned Counsel for the parties.

87. The result of the aforesaid discussion is that the decision of the Equivalence Committee dated March 11, 1994 is set aside. Consequently, all further actions taken by the Respondent's equal to this decision are rendered nonest. All the persons obtaining B.Ed. degree through Correspondence Course from Universities recognised by University Grant Commission, shall be treated equal to those securing this degree from Universities through regular course. The Respondents shall proceed with the cases of the Petitioners and similarly placed persons as if the decision of the State Government did not exist and they shall be considered for employment accordingly. In case these candidates are selected for appointment, they would be assigned the seniority with their batch-mates. Other consequential benefits which flow as a result of this decision, may also be extended to them.

88. Parties are, however, left to bear their respective costs.

Kamlesh Sharma,J.(Minority view)

89. I have had the advantage to go through the judgment of my learned brother, Bhawani Singh, J. I regret my inability to agree with the view taken by his Lordship in respect of preliminary objection raised by the learned Advocate

General therefore, I have written separate judgment upholding the preliminary objection for the following reasons:

In the earlier part of his Judgement, Bhawani Singh, J. has given resume of facts of each of the writ petitions and reply-affidavit as well as respective submissions of the parties and the case law cited on their behalf, which I need not repeat.

90. From the pleadings as well as submissions made on behalf of the parties, it is clear that the controversy in these writ petitions is whether the State of Himachal Pradesh is justified in debarring the Petitioners and Ors. from participating in the recruitment to the post of Trained Graduate Teacher (for short "T.G.T.") on the ground that they are B.Ed. through correspondence course from various Universities of the country which has been declared not equivalent to B.Ed. (Regular) degree of Himachal Pradesh University. Admittedly, the Petitioners have obtained B.Ed. degree through correspondence course run by various Universities in the country on the basis of which they are candidates for recruitment to the post of T.G.T. They had cleared screening test and they were called for the interview but in the call letter, the following note-was added:

The B.Ed. through Correspondence run by various Universities in the country is not recognised as equivalent to B.Ed. (Regular) Degree of Himachal Pradesh University as per decision taken by the equivalence committee in its meeting held on 13.5.1992, item No. 7.

91. The effect of this note is that the Petitioners and Ors. who have obtained B.Ed. degree through correspondence course, run by various Universities in the country, are not eligible for the post of T.G.T. Feeling aggrieved, the Petitioners have filed the present writ petitions challenging the decision of the State of Himachal Pradesh contained in the aforesaid Note on various grounds. The writ petitions are opposed by the State of Himachal Pradesh, firstly, on the preliminary objection that the writ petitions are not maintainable in this Court as the subject matter of the controversy raised therein does not fall within the purview of Article 226 of the Constitution of India. The precise submission made on behalf of the State of Himachal Pradesh is that the question of legality and constitutionality of the decision contained in the aforesaid note is a matter pertaining to recruitment or concerning recruitment which is in the exclusive jurisdiction of the State Administrative Tribunal in view of the provisions of Sections 15 and 28 of the Administrative Tribunals Act, 1985 (hereinafter called "the Act") and this Court is debarred from exercising any jurisdiction, power and authority in relation to such a controversy.

92. On the other hand, the learned Counsel appearing for the Petitioners have refuted this preliminary objection and their first submission is that, in fact, the matter pertains to acquisition of eligibility for the post of T.G.T. which is neither recruitment nor matter concerning recruitment and falls within the purview of Article 226 of the Constitution of India. For making this submission, they have relied upon Full Bench decision of this Court in Padma Sharma and Ors. v. State

of H.P. and Ors. 1990 (1) S.L.C. 1.

93. The submission made by the learned Counsel for the Petitioners is though attractive at the first glance, yet, without substance. The ratio of the judgment in Padma Sharma's case (supra) does not apply to the present writ petitions as the controversy as well as the context in which it had arisen in the said case was altogether different. In the case of Padma Sharma, the writ Petitioners had approached this Court to seek a direction that they be admitted to one year Junior Basic Training (Condensed) Course on the basis of their qualification as Diploma Holders in Nursery and Infant Training Course. Their precise grievance was that prior to the year 1983, all those who were qualified in the Nursery Teachers Training Course were admitted to the Junior Basic Training (Condensed) Course but thereafter the Petitioners who had qualified Nursery Training in the Sessions 1983-84 were not admitted to the course. It was in this context that the matter was referred to the Full Bench to answer the question "Whether this Court has jurisdiction to entertain and consider petitions like the present or the matter should go before the State Administrative Tribunal."

94. The learned Judges of the Full Bench considered the scheme of Junior Basic Training (Condensed) Course and held in para 9:

The Scheme provides that after successful completion of training, employment will be provided to the candidates on their turn subject to availability of posts and they shall have no claim for appointment as a matter of right for recruitment. This condition clearly rules out any claim, on the part of the person who is admitted to and obtains training in one year Junior Basic Training Condensed Course, to appointment to any service or civil post under the State of Himachal Pradesh by virtue only of having received such training. The J.B.T. Condensed Course only enables a person admitted to it to acquire eligibility for being considered for recruitment to a service or a civil post and no more.

And further in para 10:

The acquisition of eligibility for appointment by itself, does not amount to recruitment as understood in service law. Moreso, having regard to the terms of the scheme.

95. The contention that acquisition of eligibility for being considered for recruitment, by admission to Junior Basic Training (Condensed) Course, was "one of the matters concerning recruitment" as envisaged under Clause (a) of Sub-section (1) of Section 15 of the Act, was also rejected in the following terms:

...It is difficult, however, to accept this submission. Merely because the Condensed course had been started to enable ineligible persons to become eligible for appointment as trained teachers and had been started by the Government with a view to enable such persons to be considered for recruitment, though not necessarily leading to their appointment, the admission to the Condensed Course cannot be treated as a matter concerning recruitment

within the meaning of Clause (a). If the submission made on behalf of the Respondents is accepted, it would amount to giving a meaning to the word "recruitment" which would not be in consonance with the accepted meaning of that term as understood in the service jurisprudence.

And further in Para 12:

Before a matter can be treated to be one concerning recruitment, it should be shown to be related with the act or process of recruitment or an act of offering inducement to a qualified person to enter a particular job or profession. In other words, it should be a part of a step for enlistment, acceptance selection or approval for appointment to a service or a civil post. Unless; the employer initiates a process towards enlistment, selection or approval for appointment, it is difficult to say that he has taken any step towards recruitment to a service or a post. Till the process is so initiated, the mere fact of affording facility to an ineligible person to acquire eligibility for consideration for appointment to a service or a civil post cannot be characterised as matter concerning recruitment.

96. For arriving at these conclusions, the learned Judge of the Full Bench have relied upon the definite meaning given to the phrase "recruitment" in the service jurisprudence, to which I shall refer to in the latter part of the judgment.

97. Applying the ratio of Padma Sharma's case (supra) to the present case, it is clear that the controversy does not pertain to acquisition of qualification/eligibility for appointment to the service or post of T.G.T. as it is not a case of admission to B.Ed. course. According to the Petitioners, they have already acquired qualification/eligibility to the service or post of T.G.T. by obtaining B.Ed. degree through Correspondence course and the objection that their said degree of B.Ed. through Correspondence is not recognised was raised when the process towards recruitment had already started. The controversy in the present writ petitions pertains to recruitment or matters concerning recruitment and the next question arises, whether it is subject matter of exclusive jurisdiction of the State Administrative Tribunal as envisaged under Clause (a) of Sub-section (1) of Section 15 of the Act or this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. The answer to this question will depend upon the interpretation of Article 323-A of the Constitution of India and the Scheme of the Act and its various provisions, namely, Sections 3(a), 14, 15, 19 and 28.

98. Under Article 323-A of the Constitution, the Parliament has been given powers to make law to provide for adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or any Local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government. Clause (A) of Sub-article (2) further provides that by way of such a law, the jurisdiction of Courts, except jurisdiction of the Supreme Court under Article 136, with respect to the disputes

or complaints referred to hereinbefore can be excluded.

99. In order to interpret a provision of the Constitution, it is well settled that the widest possible amplitude should be given to an expression used therein. The words "Recruitment and Conditions of Service" have also been used in Article 309 of the Constitution. The expression "Conditions of Service" has been given very wide meaning by the Supreme Court in *State of Madhya Pradesh and Others Vs. Shardul Singh*, and *I.N. Subba Reddy Vs. Andhra University and Others*, as all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc. In view of this meaning to expression "Conditions of Service", it is clear that those pertain to persons in the service or appointed to the post and the words "of persons appointed to public services or posts" have been used with "conditions of Service" and not with "recruitment".

100. So far the expression "recruitment" is concerned, it has a definite connotation in the service jurisprudence. As held by the Full Bench of this Court in *Padma Sharma's case* (supra), Recruitment to a service or a civil post connotes the idea of enlistment, acceptance, selection or approval for appointment to a service or to a civil post. It embraces within its ambit any step taken by the employer towards enlistment, acceptance selection or approval for appointment to a service or to a post. It is clear that unless the employer initiates the process towards the aforesaid, it is not possible to say that he has taken any steps towards recruitment to a service or post..."According to Websters" Third" New International Dictionary, at page 1899 "Recruitment" means, the Act of process of recruiting or the act of offering inducement to qualified personnel to enter a particular job or profession. The learned Judges of the Full Bench have also relied upon the Division Bench Judgment of Punjab and Haryana High Court in *Basant Lal Malhotra Vs. State of Punjab and Others*, in which it is held that the term "recruitment" connotes and signifies enlistment, acceptance, selection or approval for appointment. While referring to the expression "recruitment" in Article 309 of the Constitution, the learned Judges of the Supreme Court in *Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others*, have also held that, "the term "recruitment" connotes and signifies enlistment, acceptance, selection or approval for appointment. Certainly this is not actual appointment or posting in service. In contradistinction, the word "appointment" means an actual act of posting a person to a particular office....

101. In view of the connotation of the expression "recruitment" and "conditions of service", it can be said without any hesitation that in Article 323-A the word "and" between the words "recruitment" and "conditions of service of persons appointed to public services and posts" has been used disjunctively and the expression "recruitment" is separate to that of "conditions of service of persons appointed to public services and posts". As such, the disputes and complaints with respect to "recruitment" are of the persons yet to be appointed to public service and posts but disputes and complaints with respect to "conditions of

service" can only be of the persons who are already appointed to public services and posts. The word "recruitment" cannot be given a restricted meaning that it pertains to those who are in service, because it would amount to "appointment" and will do violence to the plain language used in Article 323-A of the Constitution. This article was inserted in the Constitution by the 42nd (Amendment) Act, 1976, apparently with the purpose of lessening the burden of Courts and ensuring speedy dispensation of justice in service matters through Administrative Tribunals. Noticing these in *S.P. Sampath Kumar v. Union of India and Ors.* AIR 1987 S.C. 386, the learned Judges of the Supreme Court have held that the Tribunals would relieve the High Courts of mounting backlog of cases and assure quick settlement of service disputes in the interest of public servants. The Act is a remedial piece of legislation and it should be given widest operation as permitted by the language used in it, from which the intention of the legislature would be clear. The only requirement is that it should pass the test of constitutionality that it is within the ambit of Article 323-A of the constitution especially its Clause 2(d) which it does pass as already held by the Supreme Court in *S.P. Sampath Kumar's* case (*supra*). The jurisdiction, power and authority given to the State Administrative Tribunal under Sub-section (1) of Section 15 of the Act are in relation to (1) recruitment and matters concerning recruitment; to any civil service of the State or to any civil post under the State and (2) all service matters concerning a person appointed to any civil service of the State or any civil post under the State.

101-.A. Section 15 of the Act is:

Jurisdiction, powers and authority of State Administrative Tribunals.-(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State: (b) all service matters concerning a person not being a person referred to in Clause (c) of this Sub-section or a member person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 appointed to any Civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Clause (b), being a person whose services have been placed by any such local or other authority or corporation or society or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply, with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities and corporations or societies controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporation or societies.

(3) Save as otherwise provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to-

(a)recruitment,and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society and

(b)all service matters concerning a person other than a person referred to in Clause (b) of Sub-section (1) of this section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.

102. Comparing the expressions used in this section with those used in Article 323-A(1) of the Constitution of India, it becomes clear that the expression "recruitment" has been further extended to matters concerning recruitment and the expression "all service matters concerning a person appointed to any civil service or to any civil post under the State" has been used in place of "conditions of service of persons appointed to public services and posts" by defining "service matters" u/s 3(q) of the Act, the perusal of which shows that service matters relate to the conditions of service of a person appointed to the service and the post. Section 3(q) is:

"service matters", in relation to a person means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects-

- (1) remuneration (including allowances) pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.

103. The same expressions as that of Section 15 are used in Section 28 which has provided for the exclusion of the jurisdiction of the Courts except the Supreme Court and Industrial Tribunal, Labour Court or any other authority constituted under the Industrial Disputes Act or any other corresponding law for the time being in force.

Section 28 of the Act is:

Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution, On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or Post or service matters concerning members of any service or persons appointed to any service or post, no court except-

- (a) the Supreme Court; or
- (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

104. Another relevant provision of the Act is Section 19 under which, subject to other provisions of the Act, the procedure for making an application to the Tribunal for the redressal of grievances by a person aggrieved is prescribed. Under Sub-section (2) of Section 19 of the Act, it is provided that the application shall be in such form and be accompanied by such documents or any other evidence and by such fee as may be prescribed by the Government. Form I which is Appendix A to the Central Administrative Tribunal (Procedure) Rules, 1987, is the prescribed form. In Para 1 of this Form, the Applicant is required to give the designation of the office in which he is employed and In Para 2 the particulars of the Order against which the application is made. Further, in Para 9, he is also to declare that he has availed all the remedies available to him under the relevant service rules before approaching the Tribunal.

105. Sections 3(q), 15, 19 and 28 of the Act have fallen for consideration of various High Courts and the interpretation given by them will be of great help for answering whether "recruitment" and matters concerning recruitment fall

exclusively within the jurisdiction of the Administrative Tribunal or this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. Out of the judgments cited by the learned Counsel for the parties, the latest Judgment is of Full Bench of Madras High Court in *Government of Tamil Nadu v. P. Hepzi Vimalabai* ILR (1994) 3 Mad 769, in which earlier Division Bench Judgment of the same High Court in *The Chairman, Railway Recruitment Board Madras, v. S. Ruban Peter and Ors.* 1990 Lab.IC 1759, was set aside. In the case before the Full Bench of Madras High Court, one of the points of reference was exactly the same as before this Court, "whether recruitment to any civil service of the State or to any civil post under the State in light of the provisions contained in Section 15(1)(a) of the Administrative Tribunals Act, 1985, on the coming into force of the Act, would come within the purview of Article 226 of the Constitution of India or would lie within the purview of the State Administrative Tribunals Act."

106. For answering the reference, the Full Bench of Madras High Court in *Government of Tamil Nadu v. P. Hepzi Vimalabai* (supra) has also relied upon the Judgment of Full Bench of Andhra Pradesh High Court in *K. Naga Raja and Others Vs. The Superintending Engineer, Irrigation Department, Irrigation Circle, Chittoor and Another*, and Full Bench of Madhya Pradesh High Court in *Dr. Usha Narwariya Vs. State of M.P. and Others*, in which almost similar point was before the High Courts for consideration.

107. While dealing with the preliminary objections that writ petitions before it were not maintainable in view of the bar under Article 371-D of the Constitution, the Full Bench of Andhra Pradesh High Court in the case of *K. Naga Raja and Ors.* (supra) held that:

The words "recruitment" and "appointment" are not synonymous. Each has its separate connotation. It cannot, however, be said that Administrative Tribunals would derive jurisdiction only when the dispute relates to a person already employed in the service; and that any dispute relating to the process of selection leading to appointment would not fall within its ambit...

The constitutional object of Article 371-D with particular reference to Clause (7) thereof, is to relieve the High Court for that matter, every other Court and tribunal, except the Supreme Court of the burden concerning service matters relating to State Government employees and in that view also it would run counter to the provisions of the Article both in letter and spirit if a restrictive meaning is given to the application of the revisions barring the jurisdiction of the High Court in terms of Clause (7) of the Article. The expression "with respect to appointment" in Clause (3) of Article 371-D should not be given a narrow meaning as to restrict its application to the stage after actual appointment. That expression not only takes within its sweep actual appointment as such or any stage posterior to such appointment but also every stage leading to the appointment. The entire process of appointment forms an integral whole and it could not be taken in parts; so as to exclude the exercise in the process of selection leading to appointment from the jurisdictional ambit of the

Administrative Tribunal. No such distinction or differentiation is warranted by the plain meaning of the expression used...It is evident that the expression "person employed" occurring in para 7 is used in a comprehensive sense for the sake of convenience to avoid repetition. A careful analysis of the language guardedly used in sub-para (1) of Para 7 would indicate that the persons employed are persons who are entitled to approach the Tribunal with "representations for the redress of their grievances relating to matters within its jurisdiction", which implies that the right of the persons to seek redressal extends to all matters within its jurisdiction. The provisions contained in sub-para (2) of para 7 of the Order are also of some relevance. The combined effect of Clauses (3), (4) and (7) of Article 371-D of the Constitution and Paras 21(d), 6 and 7 of the Order is that the Administrative Tribunal, and Administrative Tribunal alone, has jurisdiction to entertain matters with respect to appointment inclusive of selection process for being appointed to the post in service of the Government. It has to be noticed that para 7 of the Order is one which lays down procedure than one conferring any right or jurisdiction. It is, in fact, an enabling provisions which gives guidance as to what the Tribunal was expected and authorised to do when a person invokes its jurisdiction in terms of para 6(1) of the Order. It would be absolutely unreasonable to hold that the intention of using the expression "person employed" is to restrict the jurisdiction of the Tribunal.

108. In Dr. Usha Narwariya's case (supra), the learned Judges of Madhya Pradesh High Court were also dealing with the question of maintainability of the writ petitions in view of Sections 14, 15 and 28 of the Act, in which the Petitioners had challenged the recruitment to the post of Assistant Professor in Zoology. The learned Judges of Full Bench have given the following interpretation to expressions "recruitment" and "matters" concerning recruitment":

It is thus clear that recruitment is an earlier part of the process which culminates in appointment. Selection is part of recruitment process and precedes appointment. Notifying the vacancies, inviting applications, their scrutiny, finalization of list of such eligible candidates as would be put to test, their written or oral test and interview, selection and approval for appointment, are all different steps in the process of recruitment. So it would not have any difference if the Preamble to the Administrative Tribunals Act and Sections 14 and 15 thereof would have used the term "recruitment" merely and avoided the use of the word "matters concerning recruitment" inasmuch as "matters concerning recruitment" would have been deemed to be included in "recruitment" itself. The use of the phrase "matters concerning recruitment" preceded by the word and conjunction "recruitment and" is definitely suggestive of legislative intent to make the provision wide in its import so as to include in "matters concerning recruitment" all such matters as could unwittingly be left out of "recruitment". Such an interpretation would also advance the object behind enactment of Tribunals Act.

And concluded in Para 26:

Having interpreted the term "recruitment" as we have done, consistently with the law laid down by the Supreme Court, we are of the opinion that we see no justification in carving out jurisdiction to the courts from the jurisdiction of the Administrative Tribunals by drawing a distinction between "pre-recruitment matters" and "recruitment matters" for such a distinction would be not real, but merely a distinction without any difference. What has been called "pre-recruitment" disputes in some of the decisions is nothing but a "dispute concerning recruitment" within the meaning of the Act and the "dispute or complaints with respect to recruitment" within the meaning of Article 323-A of the Constitution. Such a dispute would lie within the jurisdiction of the Administrative Tribunals.

109. While answering the reference before it, The Full Bench of Madras High Court in Government of Tamilnadu's case (supra) has held in Paras 30, 33, 34, 35, 36 and 37:

In our view, the use of the expression "matters concerning recruitment" is wide enough to cover and include all matters concerning recruitment. There is no warrant to make a distinction between "pre-recruitment matters" and "recruitment matters". We are of the opinion that the view expressed by the Division Bench in Ruban's case that only "in service" candidates can raise disputes in respect of matters pertaining to recruitment and not a person not in service is not acceptable. On the contrary, "recruitment" is a process which would cover within its ambit all the necessary steps commencing from the stage of notifying the vacancies and ending with appointment of selected candidates. The facts that the definition of the expression "service matters" in Section 3(q) of the Act does not make any reference to recruitment is wholly irrelevant. "Recruitment" is separately referred to in the preamble as well as in the relevant provisions of the Act." In addition thereto, the expression "conditions of service of persons appointed" is also found. Section 3(q) of the Act is applicable to persons appointed to service. That is why that section does not make any reference to "recruitment".

33. Section 19 of the Act, which deals with the making of applications to the Tribunals, is merely procedural and in our opinion, the said provision is wide enough to cover any matter which falls within the jurisdiction of the Tribunal. We have already explained the scope and jurisdiction of the Tribunal to deal with all disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union and the State. Section 19 of the Act cannot control the substantive provisions of Sections 14 and 15 of the Act. Form I, which was framed u/s 19 of the Act, cannot also, in our view, be pressed into service to understand the scope of jurisdiction of the Tribunal under Sections 14 and 15 of the Act.

34. In this connection, it is useful to refer to Section 28 of the Act extracted supra, wherein the words "service" and "post" have not been defined. This section says that it shall be effective on and from the date on which any

jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal. Therefore, we have necessarily to refer to the provisions of Sections 14 and 15 of the Act relating to jurisdiction, powers, etc. of the Tribunals constituted under the Act. Those two sections have been extracted in paragraphs supra.

35. The expressions "service" and "post" are defined in Clauses (P) and (K) of Section 3 of the Act as service or post within or outside India. The expression "service matters" occurring in this section is also referred in Clause (q) of Section 3 as all matters relating to the conditions of service of any person in connection with the affairs of Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government. Accordingly, this section provides that no court except the Supreme Court shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

36. Article 323A of the Constitution uses the expression "recruitment" and "conditions of service" of persons appointed to public service and posts. There is a clear distinction between the word "recruitment" and "appointment". Having regard to the use of the words "recruitment" and "matters concerning recruitment" in the Preamble and in Sections 14, 15 and 28 of the Act and in Article 323A of the Constitution, it is clear that the Tribunal shall have exclusive jurisdiction to deal with all matters specified therein and the High Court shall not have jurisdiction to decide questions relating to recruitment and matters concerning recruitment in writ petitions filed under Article 226 of the Constitution of India.

37. Further, we are also of the view that the word "recruitment" cannot be clubbed with the expression "appointment" because persons appointed will never be aggrieved by recruitment. This is the view taken by a Division Bench of the Allahabad High Court in the case of Shudhan Shee Tripathi v. Union of India which reads as follows:

In Clause (1) of Article 323-A the relevant words used are "recruitment" and conditions of service of persons appointed to public service and "posts". It is obvious that the words "recruitment" and "conditions of service of persons appointed" have been used to indicate different meanings and purpose. The appointment to public service or post is not the same thing as the recruitment. The "appointment" as defined in words and Phrases, Permanent Edition, Volume 3-A means the designation of person to hold an office (Use of Braden V.O. Neill, 83 A 2d 382). It also means the designation of a person, by the person or persons having authority therefore to discharge the duties of some office or trust in re: Nicholson's Estate.

"appointment" is used in the sense of designation to or selection for public office not only as meaning the office or service to which one is appointed, but denoting

the right or privilege conferred by an appointment, and the subject of a term of office is fairly included in a broad significance of the word *State v. Peake*.

The meaning of the word "recruitment" specified in the Shorter Oxford Dictionary Vo. II, 1978 Edition Page 1768 is "a reinforcement, the act or process of recruiting.

Taking clue from the words used in Article 323-A of the Constitution the Parliament deliberately used the word "recruitment" and "matters concerning recruitment" in Sections 14 and 28 of the Act so as to indicate that the Tribunal shall have exclusive jurisdiction to deal with these matters and that the High Court in view of the specific provisions contained in Section 28, shall not have jurisdiction to entertain or adjudicate upon the petition in which questions relating to recruitment and matters concerning recruitment are raised.

In view of the above, we are unable to subscribe to the view taken by the Full Bench of the Himachal Pradesh High Court in the decision reported in 1989 (3) A.I.S.L.J. 129.

110. With utmost humility, I may state that in my opinion, the law laid down by the Full Bench of Madras High Court in *Government of Tamil Nadu and Ors.* " case (supra) is the correct law but I may emphasise that the law laid down by the Full Bench of this Court in *Padma Sharma's* case (supra) is not, in any way, in conflict with the Full Bench Judgment of Madras High Court and the learned Judges of the Full Bench of Madras High Court were not right in not subscribing to its views. Even at the risk of repetition, I may reiterate that the Full Bench of this Court in *Padma Sharma's* case (supra) was not dealing with a case pertaining to recruitment but admission to Junior Basic Training (Condensed) Course which was to enable a person to just acquire eligibility for being considered for recruitment to the post of Junior Basic Trained Teacher and it was in this context that the learned Judges held that the matters pertaining to acquisition of qualification/eligibility for appointment to the service or post are entertainable by this Court in exercise of jurisdiction under Article 226 and 227 of the Constitution of India. The observations of the learned Judges of the Full Bench in respect of the meaning of expressions "recruitment" and "appointment" and the interpretation of the various provisions of the Act are the same as that of Full Bench of Madras High Court. I may point out that a Division Bench of this Court, of which I, alongwith his Lordship S.N. Phukan, J (now C.J.), was a member, has decided the case of *Ramesh Chander v. State and Anr.* ILR 1995 HP 71, mainly relying upon the Division Bench Judgment of Madras High Court in the *Chairman Railway Recruitment Board's* case (supra), which has been set aside by the Full Bench Judgment of the same High Court in *Government of Tamil Nadu and Ors.* " case (supra), which in my opinion has laid down correct law.

111. In this view of the matter, with respect, I may State that the law laid down in *Ramesh Chander's* case (supra) is not the correct law.

112. The result of the above discussion is that the preliminary objection raised by

the learned Advocate General is upheld that these writ petitions which pertain to "recruitment and matters concerning recruitment" exclusively fall within the jurisdiction of the State Administrative Tribunal in view of the provisions of Sections 15 and 28 of the Administrative Tribunals Act, 1985 and that this Court is debarred from exercising any jurisdiction powers and authority in relation to them. In view of this, I need not examine these writ petitions on merits, which are dismissed as not maintainable.

ORDER

113. In view of the majority decision, the writ petitions are allowed and the Petitioners would be entitled to the reliefs recorded in the leading judgment.