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**(1995) 05 PAT CK 0003**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 5854 of 1994**

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| Dr. Rameshwar Prasad Singh    | Vs | APPELLANT  |
| The State of Bihar and Others |    | RESPONDENT |

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**Date of Decision :** 26-05-1995

**Acts Referred:**

**Citation :** (1995) 05 PAT CK 0003

**Final Decision :** Allowed

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### Judgement

S.K. Homchaudhuri, J.—In both the writ petitions identical points are involved and as such, the petitions are disposed of by this common judgment.

2. The points for decision involved in these petitions are:

(i) Whether constitution of the present Bihar University (Constituent Colleges) Service Commission by the Notification dated 16.3.1994 is invalid and if so whether the selections by the said Commission for the post of Principal are illegal and void.

(ii) Whether the reservation sought to be made in the post of Principal of the Constituent Colleges at a fixed percentage is arbitrary unreasonable and untenable.

(iii) Whether reservation in the post of Principal, even if permission, would apply retrospectively in respect of the posts which tell vacant and for filling of which applications were already invited and received from the eligible candidates prior to enactment of the Bihar Reservation of Vacancies in the Posts and Services (for Scheduled Castes Scheduled Tribes and other Backward Classes) (Bihar Act 3 of 1992) or not.

In C.W.J.C. No. 5854 of 1994, following additional points are raised:

(i) that the Members of the Expert Committee appointed for selection of the Principals do not possess requisite qualification.

(ii) that constitution of the "Commission" close on the heels of the amendment of the provisions of the Bihar State Universities (Constituent Colleges) Service Commission Act, 1987, by Bihar Act 5 of 1994, is mala fide.

3. It is necessary to state the relevant facts in brief, for deciding the points urged in the petitions. The Principals of the Constituent Colleges of the Universities in the State of Bihar are appointed on the basis of the selection made by the Bihar State Universities (Constituent Colleges) Service Commission (hereinafter referred to as the "Commission"). The Commission is constituted as per the provisions of the Bihar State University (Constituent Colleges) Service Commission Act, 1987. Since 1987 posts of Principal in a number of Constituent Colleges of the Universities in the State of Bihar fell vacant and the Commission invited applications from time to time from the eligible candidates for appointment of Principal to fill up the vacant posts. The Petitioners of both the writ petitions along-with others submitted applications in response to the advertisements offering their candidatures. But the Commission continued to sit over the applications and did not make any selection for a long time since 1987.

4. In the year 1992, the Bihar Reservation of Vacancies in Posts and Services (Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (Act 3 of 1992) was enacted. Section 4 of the Act 3 of 1992 reads as follows:

4. Reservation for direct recruitment.- AW appointments to services and posts in an establishment which are to be filled by direct recruitment shall be regulated in the following manner namely:

(1) The available; vacancies shall be filled up-

X X X X

(a) Scheduled Castes 14%

(b) Scheduled Tribes 10%

(c) Extremely Backward class 12%

(d) Backward Class 8%

(e) Economically Backward Women 3%

(f) Economically Backward 3%

Total 50%

Under Section 15 of Act 3 of 1992, the State Government is empowered to frame rules to give effect to the provisions of the Act. By Bihar Ordinance 18 of 1993 provision of Act 3 of 1992 was amended and by such amendment, after Clause (e) of Sub-section (6) of Section 4, new Clause (f) has been added, which reads as follows:

(f) Notwithstanding anything contained in the contrary in the Ordinance or in any

other law or rules for the time being in force, or in any judgment or decree of the Court, the provisions of Section 4 shall apply to all such cases in which all formalities of selection have been completed before 28th April, 1993 but the appointment letters have not been issued.

Section 2(c) of the Act 3 of 1992, provides that term "establishment", amongst others, includes Universities and Colleges affiliated to the University.

5. Following the enactment of Act 3 of 1992, the "Commission" made an advertisement on 27.7.1992 inviting applications for vacant posts of Principals of Constituent Colleges of different Universities of Bihar indicating the total number of vacant posts and number of posts reserved for the candidates of Scheduled Caste, Scheduled Tribes and other Backward Classes etc. It is stipulated in the said advertisement that the candidates, who had already applied in response to previous advertisements need not apply again. In the year 1994, by the Bihar State University (Constituent Colleges) Service Commission known as Bihar State University (Constituent Colleges) Service Commission (Amendment) Act, 1993 (Bihar Act 5 of 1994) the Bihar State University (Constituent Colleges) Service Commission Amendment Act, 1987, was amended. Section 3 of the Act 5 of 1994, which has direct bearing in Petitioner's case runs as follows:

3. In place of Section 6 of the Bihar Act, 18 of 1987, the following will be substituted:

6. Qualification of Chairman and Members.-

(1) A person to be appointed as Chairman shall have a minimum of 5 years experience as a University Professor.

(2) Excluding the Chairman, half of the members shall not be below the rank of University Professor and half of the members shall not be below the rank of Additional Secretary of the Government of India/State Government.

6. The said Amendment Act, Bihar Act 5, 1994 was published in the Bihar Gazette (Extra-Ordinary) on 15.3.1994. Close on the heels of amendment, by notification dated 15.3.1994, the Government of Bihar, Department of Higher Education issued a notification on 16.3.1994 purporting to constitute the Commission as follows:

No. ... 14/94-149/After the passing of the Bihar State University (Constituent Colleges) Service Commission (Amendment) Act, 1994 and because under the provisions of Section 3 (ka) of the said Amendment Act, the tenure (Karyakal) of the Chairman and all members of the Commission have automatically expired, the Governor, in exercise of the powers vested in him u/s 3 of the original Act, makes appointment of the Chairman and members of the Bihar State University (Constituent Colleges) Service Commission in the following manner:

1. Prof. Syed Abdul Waheb Asharfi M.A. (Urdu), M.A. (Persian), M.A. (English), B.L., Ph.D., University man Professor and Head, the Ranchi University, Ranchi.

2. Prof. L.N. Sahu, Head of the Department of Electrical Member Engineering, R.I.T., Jamshedpur.

3. Prof. B.P. Yadav, Former Member, Bihar State University Member Service Commission.

4. Prof. Suresh Pd. Singh, University Professor of Jeeva Vigyan Member (Biodgy), Ranchi University and Principal, G.N. College, Dhurva, Ranchi.

5. Shri Satya Narayan Prasad, Professor of Physics, Bhagalpur Member College of Engineering, Bhagalpur.

2. The appointment of Chairman and members is done for a period of 6 years from the date of their joining or until they attain the age of 62 years whichever is earlier.

7. The newly constituted "Commission" by way of corrigendum made advertisement on 26.4.1994 for the posts of Principal in the light of the new reservation policy indicating the total number of vacant posts of Principal in the Constituent Colleges of different Universities and the number of posts. reserved for the candidates belonging to Scheduled Castes, Scheduled Tribes, extremely Backward classes, Women of Backward Classes etc. It is stipulated in the said advertisement that the candidates, who had already applied in response to the previous advertisements, need not apply again.

8. In both the petitions, all the four members of the Commission constituted by notification dated 16.3.1994 have been impleaded as Respondents. The Petitioners have challenged the constitution of the Commission by the notification dated 16.3.1994 on the ground that none of the Respondents members so appointed possesses requisite qualification for appointment as the Member of the Commission inasmuch as:

(i) R.I.T., Jamshedpur, is an autonomous body and is neither a Government College nor a University and, as such Respondent Prof. L.N. Sahu, who is the Head of the Department of Electrical Engineering, R.I.T., Jamshedpur, does not hold post equivalent to the rank of University Professor or the rank of Additional Secretary to the State Government or Central Government.

(ii) Respondent Prof. Satya Narayan Prasad is a Professor of Physics of Bhagalpur College of Engineering, Bhagalpur. Bhagalpur College of Engineering is a Government College and is not a College under the Bhagalpur University and that in Bhagalpur Engineering College, there is no sanctioned post of University Professor. As such Respondent Satya Narayan Prasad does not hold the post equivalent to the rank of University Professor or that of the Additional Secretary to the State Government or Central Government.

(iii) Both Respondent Prof. B.R Yadav and Respondent Prof. Suresh Prasad Singh were temporarily promoted to the post of Professors from the post of Reader under the time bound promotion scheme without recommendations of the

"Commission" by the Ranchi University as per notifications dated 8.2.1989 and 28.12.1988 respectively. Their promotions to the posts of Professor under the time-bound promotion scheme having not been concurred by the "Commission", their temporary promotions to the posts of Professor were valid only for a period of 6 months and consequently both of them stood reverted to the posts of Reader after expiry of six months from the date of their promotion, by operation of law and they ceased to hold the posts of Professor long before their appointment as Members of the "Commission".

9. The Petitioners have challenged the reservation in the post of Principal of the Constituent Colleges on the following grounds:

(i) There is no common cadre of Principal for the constituent Colleges of the Universities in Bihar, inasmuch as no rule constituting a common cadre of the Principals of the constituent Colleges in the University, has yet been framed, which is mandatory for the constitution of a separate cadre. As such, the post of Principal in each Constituent College is a single post and there can be no reservation for a single post.

(ii) No amendment to the Rules has been made under the provisions of Section 26 of the Bihar State Universities Act by the Senate. As per Clause 16 of the Bihar University Calendar, there are reservations in the posts of Lecturer and no reservation in the post of Principal can be made without making amendment to the relevant Rules. The amendment of Statutes as regards reservation of post made in the purported exercise of power u/s 5(2) of the Bihar Inter University Board Act, as circulated under memo dated 16.1.1992 (Annexure B/1 to the affidavit-in-opposition is illegal and without jurisdiction.

(iii) The post of Principal is the key post in a College and the academic discipline and imparting of proper education to the students in the College much depend on the efficiency and ability of the Principal. As such, the reservation in the post of Principal, sought to be made is unreasonable and as such reservation will invariably defeat the purpose of imparting proper education and upliftment of the students belonging to Scheduled Caste, Scheduled Tribe and other Backward communities.

10. The Respondents in their affidavit-in-opposition, on the other hand, contended, that the Commission has been validly constituted by notification dated 16.3.1994 and all the Members of the Commission have requisite qualifications for being appointed as Members thereof inasmuch as:

(i) Prof. L.N. Sahu is a Professor of Electrical Engineering in the Electrical Engineering Department of the Regional Institute of Technology (in short R.I.T.), Jamshedpur and the present scale of the post he held is Rs. 4,500/- to 7,300/-, which is equivalent to the pay scale of the University Professor. Being the senior-most Professor, Respondent Prof. L.N. Sahu was also working as acting Principal of the R.I.T., Jamshedpur, at the time he was appointed as-a Member of the Commission. He was appointed to the post of Professor after being selected by

the Select Committee through open advertisement and that he joined the post of Professor in the year 1975 and he was confirmed in the post long back. It was also contended by the Respondents that the R.I.T., Jamshedpur, is an autonomous institution having been established by the Government of India in consultation with the concerned State Government. As such, the post held by Respondent Prof. Sahu cannot be held to be a post below the rank of a University Professor.

(ii) Respondent Satya Narayan Prasad is a Professor of Physics in a Government College, namely, Bhagalpur College of Engineering and the pay scale of Professor of the said College is Rs. 4,500/- to Rs. 7,300/-, which is equivalent to the pay scale of a University Professor as well as to the post of the Additional Secretary to the State Government. Respondent Satya Narayan Prasad is a Class I Officer in the rank equivalent to that of the Additional Secretary to the State Government.

(iii) Respondents B.P. Yadav and Dr. Suresh Prasad Singh were appointed to the posts of Professor from the posts of Reader under the time-bound promotion scheme by notifications dated 8.2.1989 and 20.12.1988, respectively. Respondent B.P. Yadav had been the members of the previous Commission. None of B.P. Yadav and Suresh Prasad Singh attained the age of 62 years.

11. Rebutting the contention of the Petitioners that the reservation in the post of Principal is illegal and untenable, the Respondents have contended that the posts of Professors are transferable from one College to another College. The Respondents have disputed the contention of the Petitioners that the post of Principal being a single post, there can be no reservation for a single post. According to the Respondents, for the purpose of reservation, a provision has been made under the Act and Statutes so framed was circulated to the Vice-Chancellors of the Universities by letter dated 10.1.1992 of the O.S.D. (II), Governor's Secretariat, Bihar. Photo copy of the said letter is annexed as Annexure B/1 to the affidavit-in-opposition, which reads as follows:

I am directed to invite a reference to this Sectt. letter No. SU-28/82-5318 GS (1) dated 24-25/11/80 on the above subject and to say that on the advice of the Bihar Inter University Board and the State Government in the Human Resource Development Department, Bihar, Patna, the Chancellor has been pleased to approve the following amendment to the Statutes u/s 5(2) of the Bihar Inter University Board Act, 1981 for implementation in all Universities (excluding Agricultural University) of Bihar-

PARINIYAM KI KANDIKA (1) KE ANT ME NIHIT PRAWDHANO "provided that the reservations shall apply only to the posts of lecturers and not to other categories of posts of teachers "KE AS-THAN PAR" "provided that the reservations shall apply to the posts of Lecturers/Principal and not to other categories of posts of teachers" KO PRATISTHAPIT KIYA JAYE.

12. Heard the learned Counsel for the Petitioners and the learned Additional

Advocate General for the Respondents.

13. Learned Counsel for the Petitioners submitted that because of the fact that the pay scale of the Professor of Electrical Engineering in the Regional Institute of Technology, Jamshedpur, is equal to that of the University Professor that cannot per se make the rank of Professor in R.I.T., Jamshedpur, equivalent to that of University Professor in as much as the R.I.T., Jamshedpur is not an University, but a College. Drawing attention to the definition of the "University Professor" under the provision of Section 2(w) of the Bihar State Universities Act, 1976, the learned Counsel for the Petitioners submitted that the function of the Professor of Electrical Engineering is quite different from that of University Professor.

As regards the question of validity of appointment of Respondent Satya Narayan Prasad, learned Counsel for the Petitioners submitted that admittedly the Bhagalpur Engineering College is a Government College and Respondent Satya Narayan Prasad is a Professor of Physics in the said College. Merely because the pay scale of the professor of the Bhagalpur Engineering College is Rs. 4,500/- to 7,300/- and is not below to that of the Additional Secretary to the Government of Bihar the rank of Professor of the said College cannot be equal to that of the rank of Additional Secretary to the Government of Bihar inasmuch as not only the Professor of the said College and the Additional Secretary to the Government of Bihar belong to different and distinct cadre their nature of function is also altogether different and distinct.

14. Learned Counsel for the Petitioners further submitted that so far as Respondents B.P. Yadav and Suresh Prasad Singh are concerned, admittedly, they are promoted to the posts of Professors under the time-bound promotion scheme without recommendation of the Commission. It is also not disputed that their promotions on the posts of Professor under the time-bound promotion scheme have not been concurred by the Commission. That being so under the provision of Sub-section (10) of Section 58 of the Act, incorporated by Bihar State Universities (Amendment) Act, 1993, Bihar Act 17 of 1993, their temporary promotions from the posts of Reader to the posts of Professor automatically came to an end, inasmuch as such promotions shall not be valid for the period exceeding six months unless recommended by the Commission. As such both Respondents B.P. Yadav and Suresh Prasad Singh, as per the provision of law, stood reverted to the posts of Reader after expiry of six months from the date of their promotion and they had ceased to hold the posts of Professor long before their appointments as Members of the Commission.

15. The learned Additional Advocate General, on the other hand, submitted that the pay scale is the most important criterion to determine the rank of a post. Respondent Prof. Satya Narayan Prasad is a Professor of Physics in the Bhagalpur Engineering College and pay scale of the Professor in the Bhagalpur Engineering College is Rs. 4,500/- to 7,300/-, which is not below to the scale of the Additional Secretary to the Government of Bihar. The Professor of the Government College is Class-I Officer of the Government and he is treated as

equivalent to the rank of an Additional Secretary to the Government of Bihar. In any view of the matter the rank of Professor of the Bhagalpur Engineering College is not lower to the rank of the Additional Secretary to the Government of Bihar. As such Respondent Prof. Satya Narayan Prasad possesses requisite qualification for his appointment as a Member of the Commission. The learned Additional Advocate General further submitted that Prof. L.N. Sahu is a Professor of Electrical Engineering in R.I.T., Jamshedpur. The pay scale of Professor of the R.I.T. is equivalent to that of the University Professor. The term "Professor" is to be taken in generic sense for determining the rank of Professor. The University Grant Commission made recommendation for giving the pay scale of University Professor to the Professor of the R.I.T. taking into consideration the importance status nature of job and the academic achievements. The most important criterion for determining the rank being the identical pay scale it cannot be said that the rank of the post of Professor/Head of the Department of the R.I.T, Jamshedpur is below the rank of University Professor.

So far as Respondents B.P Yadav and Suresh Prasad Singh are concerned, learned Additional Advocate General submitted that although they were appointed temporarily under the time-bound promotion scheme to the posts of University Professors, they continued to hold the posts of University Professors at the time of their appointments as Members of the Commission and as such they have had the requisite qualification for their appointments as members of the Commission.

16. To appreciate the rival contentions of the parties, it is necessary to consider the meaning of the term "rank". The word "rank" as used under Article 311 of the Constitution of India has not been defined. However, it is to be noted that the rank has different connotation from the cadre. The rank ordinarily means a class or grade of service while the cadre means the strength of a service or a part of service which is sanctioned as a separate unit.

In the case of K. Gopaul Vs. Union of India (UOI) and Others, the Appellant, a confirmed Inspector-General of Registration and a head of the department in Madras State was transferred to the post of "Accommodation Controller" a post carrying the same scale of pay, as the former post was included in the I.A.S. Cadre post. The Appellant challenged the legality of the transfer on the ground that the transfer resulted in reduction in rank firstly because the latter post was not the post of a head of the department and secondly because the post of I.G. was superior in rank to that of a Deputy Secretary and the latter was not.

In that case, the Hon'ble Supreme Court took note of the fact that the post to which the Appellant was transferred, carried the same pay scale of the post from which he was transferred and rejected the contention of the Appellant holding that the fact that the latter post was not designated as that of a head of department was of no consequence as rank in Government service did not depend upon the mere circumstances that the Government servant in the discharge of his duties is given certain powers.

In the case of S.K. Srivastava v. Union of India reported in 1971 (2) S.L.R. 453 a Division Bench of the Delhi High Court observed as follows:

The concept of "rank" being solely significant for the purposes of administration of service and the law relating to it, the Government has always applied the criterion of pay to distinguish one class or grade of service or post from another. In fixing the pay of a particular post or the scale of pay of a particular service, the Government considers the status and responsibility attached to a particular post or class of service.

17. From the aforesaid decision of the Hon"ble Supreme Court as well as the Delhi High Court, it becomes apparent that the scale of pay is the important factor for determining the rank in Government service. I find force in the submission of the learned Additional Advocate General that the term "Professor" should be taken in generic sense. The pay scale of the post held by Prof. L.N. Sahu is, admittedly, equivalent to the post of the University Professor although the post of Professor of R.I.T., Jamshedpur, does not belong to the cadre of University Professor. In view of the fact that as per recommendation of the University Grant Commission, the Professor of R.I.T., Jamshedpur, has been provided scale equivalent to that of University Professor and the nature of profession of the University Professor and that of the Professor R.I.T., Jamshedpur, in teaching, I am of the opinion that the post held by Prof. L.N. Sahu not below the rank of University Professor and as such he has requisite qualification for his appointment as a Member of the Commission.

So far as the question of appointment of Prof. Satya Narayan Prasad as a Member of the Commission is concerned, it is not disputed that the post of Professor of Physics of the Bhagalpur Engineering College, which is held by him, is a Class-I post and his pay scale is equal to that of the Additional Secretary to the Government of Bihar and the Bhagalpur Engineering College being a Government College, it cannot be said that the post of Professor of Bhagalpur Engineering College is below the rank of the Additional Secretary to the State Government. That being so in my opinion, Prof. Satya Narayan Prasad possesses requisite qualification for his appointment as a Member of the Commission.

18. So far as Respondents B.P. Yadav and Suresh Prasad Singh are concerned, undisputedly they were provisionally promoted to the post of University Professors under the time-bound promotion scheme from the posts of Reader without recommendation of the Commission by the order issued by the University in the years 1989 and 1988, respectively.

19. The Statute regarding the time bound promotion scheme was framed on the recommendation of the Bihar Inter University Board and the State Government, which was approved by the Chancellor under the provisions of the Bihar Inter Universities Act, 1981. The Statute was circulated by an office letter dated 21.12.1986. Under the scheme, a Lecturer, after completion of ten years of continuous service in one or more Universities, can be promoted to the post of

Reader and similarly a Reader after completion of the prescribed period of continuous service as Reader can be promoted to the post of University Professor in accordance with the provisions prescribed under the Statute. Clause 2 of the Statute provides that such promotion under the time-bound promotion scheme shall be deemed to be personal promotion. But it shall not be automatic. Such promotion has to be made on the recommendation of the Commission on consideration of the experience, C.C. Roll of the teacher concerned.

20. The scheme of time bound promotion has been introduced with a view to removing stagnation of the individual employee in the pay scale of a particular post for a long time, Such promotion is personal and is made primarily to give benefit of pay of the higher post. Such promotion is made irrespective of the fact whether there exists sanctioned post in the cadre of the higher post or not and the promotion is made generally without corresponding obligation to discharge the duties and responsibilities of the higher post, to which one is promoted. As such it is doubtful as to whether such personal promotion to higher post under the time bound promotion scheme can be regarded as promotion to the rank of higher post, to which one is promoted. Sub-section (10) of Section 58 of the Bihar State Universities Act, as incorporated by Act 17 of 1978, to which learned Counsel for the Petitioners draw my attention, reads as follows.:

(10) Notwithstanding anything to the contrary contained in this Act or Statute, Rules or Regulations made there under promotion given on temporary basis to the post of Reader or Professor or Officer of the University shall not be valid for a period exceeding six months unless recommended by the Bihar State University (Constituent Colleges) Service Commission.

21. Undisputedly, both Respondents B.P. Yadav and Suresh Prasad Singh were promoted under the time bound promotion scheme without the recommendation of the Commission and their appointments were also subsequently not concurred by the Commission. Consequently, by operation of law, time bound promotions of Respondents B.P. Yadav and Suresh Prasad Singh to the posts of University Professor came to an end after the expiry of six months from the date of their promotions to the said posts and they stood automatically reverted to the lower posts, from which they were so promoted. For the reasons stated above, both Respondents B.P. Yadav and Suresh Prasad Singh ceased to hold the posts in the rank of University Professor long before their appointments as Members of the Commission. As such, they did not have requisite qualifications for their appointments as Members of the Commission and consequently the Commission, constituted by the impugned notification dated 16.3.1994, is illegal and invalid.

22. The petitions having succeeded on the ground that the constitution of the Commission by the notification dated 16.3.1994 is illegal and invalid, I do not feel inclined to go into the other points raised in the petitions. However, as regards the question of reservation in the post of Principal of the Constituent Colleges of the Universities in Bihar, I am of the view that the Principal of a College holds the key position in the institution and that the maintenance and

academic discipline and imparting of proper education in the College much depend on the ability, personality and efficiency of the individual holding the post of the Principal. Therefore, in respect of appointment of the Principal of the College, there should be no compromise as regards the merit of the incumbent on any ground. In this connection, it is appropriate to take note of the observation of the Hon'ble Supreme Court made in paragraph 442 (Para 508 of SCC) of the judgment passed in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., on which the learned Counsel for the Petitioner had placed reliance. In paragraph 442 of the said judgment, the Hon'ble Supreme Court, amongst others, was pleased to observe as follows:

In this connection, it is worth serious consideration whether reservation in the form of preference instead of exclusive quota should not be resorted to in the teaching profession in the interests of the backward classes themselves. Education is the source of advancement of the individual in all walks of life. The teaching profession, therefore, holds a key position in societal life. It is the quality of education received that determines and shapes the equipment and the competitive capacity of the individual, and lays the foundation for his career in life. It is therefore in the interests of all sections of the society-socially backward and forward and of the nation as a whole, that they aim at securing and ensuring the best of education. The student whether he belongs to the backward or forward class is also entitled to expect that he receives the best possible education that can be made available to him and correspondingly it is the duty and the obligation of the management of every educational institution to make sincere and diligent efforts to secure the services of the best available teaching talent. In the appointments of teachers, therefore, there should be no compromise on any ground. For as against the few who may get appointments as teachers from the reserved quota, there will be over the years thousands of students belonging to the backward classes receiving education whose competitive capacity needs to be brought to the level of the forward classes. What is more, incompetent teaching would also affect the quality of education received by the students from the other sections of the society. However, whereas, those coming from the advanced sections of the society can make up their loss in the quality of education received, by education at home or outside through private tuitions and tutorial classes, those coming from the backward classes would have no means for making up the loss. The teachers themselves must further command respect which they will do more when they do not come through any reserved quota. The indiscipline in the educational campus is not a little due to the incompetence of the teachers from whatever section they may come, forward or backward. It is, therefore, necessary that there should be no exclusive quota kept in the teaching occupation for any section at all. However, if the candidates belonging to both backward and forward classes are equal in merit, preference should be given to those belonging to the backward classes. For one thing, they must also have a "look into" the teaching profession as in other professions. Secondly, in this vital profession also, the talent, the social

experience and the new approach and outlook of the members of the backward classes is very much necessary. That will enrich the profession and the national life. Thirdly, it will also help to meet the complaints of the alleged step-motherly treatment received by the students from the backward classes and of the lack of encouragement to them even when they are more meritorious. Hence in the teaching profession, it is preference rather than reservation, which should be resorted to under Article 16(4) of the Constitution. A precaution, however, has to be taken to see that the selection body has a representation from the backward classes.

23. The aforesaid observation of the Hon<sup>ble</sup> Supreme Court in the case of Indra Sawhney (supra) squarely applies against the reservation in the post of the Principal of the College. A mechanical approach in keeping reservation in the post of Principal of the colleges at a uniformed percentage is unreasonable and unrealistic.

24. In the result, the petitions are allowed. Constitution of the Commission by notification dated 16.3.1994 having been held illegal and invalid, any selection of the Principal by the Commission or any appointment made on the basis of such selection are equally invalid, inoperative and void. The Respondents are directed to reconstitute the Commission with qualified Members at an early date so that the vacant posts of the Principal in the Constituent Colleges may be filled up without further delay. In the facts and circumstances of the cases, I make no order as to cost.

Aftab Alam, J.

25. Without going into the question of reservation, I agree that the constitution of the Commission was illegal and invalid and on that ground alone these applications are fit to succeed.