

(1998) 11 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 30203 of 1995

Hari Sharan Goyal

APPELLANT

Vs

Board of Gevernors, M.L.N. Regional Engineering College,
Allahabad and others

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Constitution of India, 1950 — Article 16
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3, 3(1), 3(5)
Uttar Pradesh State Universities Act, 1973 — Section 2(4)

Citation : (1998) 4 AWC 560 : (1998) AWC 560 : (1999) 1 UPLBEC 681

Hon'ble Judges : S.C. Verma, J; R.K. Singh, J

Bench : Division Bench

Advocate : Ram Niwas Singh and V.K. Chandel, for the Appellant; S.C., P.K. Agrawal, M. Goel and R.P. Goel, for the Respondent

Judgement

R.K. Singh, J.—Moti Lal Nehru Regional Engineering College, Allahabad is run by a Society registered under the Societies Registration Act, 1860. The management of the college is looked after by the Board of Governors as per memorandum of Association of the College. Regional Engineering Colleges have national character with the faculty and students drawn from all parts of the country. The Chairman of the college is nominated by the State Government in consultation with Central Government. The college is an associated college of the University of Allahabad within the meaning of Section 2 (4) of the U. P. State Universities Act, 1973. The college comprises the following departments of the faculty of Engineering, (i) Civil Engineering ; (ii) Electrical Engineering ; (iii) Mechanical Engineering ; (iv) Applied Mechanics, Hydraulic and Hydraulic Mechanics and (u) Applied Mathematics. Applied Science and Humanities.

2. The Principal of the College has issued an advertisement of vacant teaching and administrative posts and the said advertisement was published in "Times of India" on 24th August, 1994 as advertisement No. 1 Teaching and

Administrative/94. A photostat copy of the advertisement is Annexure-I to the writ petition. Twenty posts of readers in different departments were advertised by the aforesaid advertisement and out of said vacancies, two posts were of the department of Mechanical Engineering. There was a note at the foot of the advertisement that the teaching posts sanctioned by U. P. Government and other administrative and Technical posts shall be reserved for Scheduled Caste (S.C.) and Scheduled Tribes (S.T.) and other Backward Classes (O.B.C.) at the stage of direct recruitment. The petitioner Hari Saran Goyal applied for his selection and appointment on one of the two posts of readers in the department of Mechanical Engineering. He appeared before the respondent No. 6 Selection Committee and the Selection Committee submitted its recommendation which has been approved by the Vice-Chairman of the Board of Governors, i.e., by the Secretary, Technical Education Department, Government of Uttar Pradesh who is ex-officio Vice-Chairman.

3. The petitioner alleges that two posts of Readers in the department of Mechanical Engineering were advertised and one candidate has been approved for his appointment against the post whereas the petitioner's name has wrongly been kept in the waiting list though another post is lying vacant, and the selection committee respondent No. 6 has directed the Principal of the college to readvertise the post mentioned in the letter dated 22.9.1995 for filling the said post by Scheduled Caste and Backward Class candidates through "Special Recruitment Drive". The petitioner alleges that as per advertisement No. 1/94, the reservation was applicable only to the posts sanctioned by the U. P. Government and it has not been stated in the advertisement as to which post was sanctioned by the Government. The post of Reader of Mechanical Engineering was not reserved. Therefore, neither the petitioner's name should have been kept in the waiting list nor the post should have been readvertised.

4. The petitioner alleges that in the Department of Applied Mechanics, the advertisement discloses only two posts of Readers in the said Department but the letter of respondent No. 6 discloses that three candidates were "selected for appointment on the post of Reader in that Department. This act of respondent No. 6 in selecting three candidates as against two advertised posts in the department of Applied Mechanics and keeping the petitioner in the waiting list and reserving the said post for the Backward Class candidate, is wholly arbitrary and discriminatory.

5. The Mechanical Engineering Department of the college has been recognised by the Government of India as one of the Centres for Quality Improvement Programme. Therefore, the post of Reader of this Department is meant for M.E. Ph.D and Post Graduate Course according to the provisions of All India Council for Technical Education. Thus, the post of Reader of Mechanical Engineering Department is sanctioned by the Government of India. The entire expenditure of post graduate is borne by Government of India. According to the petitioner, this post cannot be reserved for Backward Class candidate and the law relating

reservation passed by the State Government is wholly inapplicable.

6. The total sanctioned post of Readers in the different Department of the college is forty eight out of which twenty six have already been filled up regular appointments and remaining two posts of Mechanical Engineering is lying vacant as per report of the Principal of the college sent to the Government of India and State Government of Uttar Pradesh. The relevant part of the report dated 31.3.1995 is Annexure-5 to the writ petition. Only twenty posts of Readers were advertised as per advertisement No. 1/94 and the remaining two posts of Mechanical Engineering were not advertisement for the reasons best know to the respondents.

7. The post of Reader is in the Scale of Rs. 3,700-5,700 which is higher than lowest of Group "A" service and exempted from the purview of reservation as college is Technical and Scientific Institution and the post of Readers are of Technical and Scientific nature and also research oriented. From Letter No. 1116/Misc, 35 dated 20th October. 1994 of the Principal, Motilal Nehru Engineering College, Allahabad (Annexure-7 to the writ petition), the rules of reservation were inapplicable on the teaching post of the college. The Government of India by its office-memorandum dated 13.5.1994 (Annexure-8 has given exemption to Scientific and Technical posts from the purview of the reservation order from O.B.C. (other backward classes). Thus, the provisions of U. P. Public Services (Reservation for Scheduled Casts, Scheduled Tribes and Other Backward Classes) Act, 1994 are not applicable to the teaching staff of the college but the Secretary of Government of U. P. has written a Circular Letter dated 25th March, 1995 directing the concerned authorities for applying the provisions of reservation.

8. The State Government has issued notification u/s 3 (5) of the U. P. Act No. IV of 1994 issuing a roster for applying the reservation under sub-section (i) of Section 3 of the aforesaid Act. The said notification is Annexure-12 to the writ petition. The petitioner has filed representation to the Principal of the college against he being placed in the waiting list though the posts of Readers in the Mechanical Engineering is lying vacant but the respondents have not taken any decision/action on the petitioner's representation.

9. The petitioner further alleges that as per advertisement No. 1/94 there were twenty posts of Readers in different departments of the College and even if the reservation Rule is applicable to the post of reader then the reservation could not have been made beyond 50% thus there were ten posts left for selection and appointment of general candidates. There is no justification for selection of four candidates against genera! quota and keeping the petitioner in the waiting list of the list of the selection candidates. Sri Ram Chandra Mehta, who has been selected for the post of Reader in the Department of Applied Mechanics belongs to Backward Class and, thus, one post of Reader has already been filled by appointment of a Backward Class candidate but the letter dated 22nd September, 1995 does not disclose that the selection of Dr. Ram Chandra Mehta has been made towards vacancy reserved for O.B.C.

10. The reservation Rules as contained in U. P. Act No. IV of 1994 is not applicable but even if it is applicable, then it could only be applied to the post which has been created after 11.12.1993. The post of Reader in Mechanical Engineering which was advertised vide advertisement No. 1/94 was created much earlier to 11.12.1993 and, therefore, the reservation Rules of the State Government was not applicable and the readvertisement of the said post is wholly illegal and arbitrary. The Board of Governors have not passed any resolution adopting reservation policy either of the State Government or of the Government of India and without such resolution the rule of reservation are not applicable to the teaching staff and in any case to the post of Reader. The Board of Governors have not laid down any criterion upon which the reservation rule will be applied. In case, it is applicable at all and without laying down any criteria or manner for application of rule of reservation, is wholly illegal and arbitrary and discriminatory.

11. The Board of Governors has neither passed any resolution nor has taken any decision to readvertise the post which were advertised as per advertisement No. 1/94 nor had given any direction for filling the said post by Scheduled Castes/ Other Backward Classes through "Special Drive Recruitment". The letter of respondent No. 6 is wholly illegal and arbitrary and Without any authority of law. On these facts the petitioner prays for the following reliefs :

"(a) issue a writ, order or direction in the nature of writ of certiorari calling upon the respondents to produce the record of the case and to quash the part of letter dated 22.9.1995 of respondent No. 6 (Annexure-2) directing the Principal of the college to readvertise the post of Mechanical Engineering for reserved candidates through "Special Drive Recruitment" and also advertisement dated 9.10.1995 (Annexure-4) ;

(b) issue a writ, order or direction in the writ of mandamus directing the respondents to appoint the petitioner on the post of reader of Mechanical Engineering on which has been selected by duly constituted selection Committee ;

(c) issue a writ, order or direction in the nature of writ of mandamus restraining the respondents from applying the Rule of Reservation on the post of Reader of Mechanical Engineering Department of the college ;

(d) issue any other appropriate writ, order or direction which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case ; and

(e) allow writ petition with costs."

12. The respondent Nos. 1 and 3 have jointly filed counter-affidavit and have contested the writ petition. The respondent has stated that the application of reservation policy was Inducted in the shape of note which has to be adopted in making selection. The Selection Committee recommended only one person who has been appointed on one of the two posts of Readers in Mechanical Engineering. The name of the petitioner was placed in the waiting list as such he

has not claim for the same post. The other post of Reader in the Department of Mechanical Engineering has been earmarked for the reserved category as per directive of the Vice-Chairman of the Board of Governors from the Government of Uttar Pradesh to readvertise this post of reserved category through Special Recruitment Drive.

13. There is only one post of Reader sanctioned for Post Graduate course in Mechanical Engineering Department against which Dr. S. K. Agarwal Reader, Mechanical Engineering Department is working. Both the posts of Readers advertised are of undergraduate course and sanctioned by the State Government. The college is following the order and directions of the State Government of Uttar Pradesh and as per directive received from the State Government the post of Reader in Mechanical Engineering was reserved under reserved category. The provisions of U. P. Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994 are applicable to the teaching staff of the college. The circular letter No. 1357/94-Solan-134/94 dated 6.5.1994 (Annexure-13 to the writ petition) lays down that the reservation policy. If it made applicable in the Institution then the same should be followed strictly and the college has accordingly acted upon to Implement the reservation for the reserved category of candidates through this Special Recruitment Drive to the advertisement No. 4/Teaching/94 which has been objected by the petitioner on account of his personal reasons and interest and hence his petition is baseless and liable to be turned down. The reservation of one post of Reader in Mechanical Engineering Department is neither illegal nor arbitrary.

14. The advertisement No. 4 of 1994 has been issued in accordance with the law. Out of two vacancies of the post of Readers in Mechanical Engineering Department 50% i.e., one was offered as per vacancy and the second vacancy has to be offered for the reserved category of the candidate. The Selection Committee has wide jurisdiction to examine the candidates appeared before it for interview and award the position of selection. The Selection Committee found Dr. R. K. Srivastava suitable and recommended his name for appointment to the one post of Reader and placed the name of the petitioner in the waiting list. The post of Reader in the Department of Applied Mechanics cannot be counted in the post of Reader of Mechanical Engineering Department.

15. The petitioner's contention that Dr. R. C. Mehla selected for the post of Reader of Applied Mechanics Department belongs to O.B.C. category and his selection was also made against this reserved category is entirely misleading and wrong. The correct position is that Sri R. C. Mehta was not selected for the reserved category.

16. The policy to adopt the reservation rules for appointment in teaching posts adopted in the advertisement No. 1/Teaching and Administration/1994 is based on the provisions in the college Rules to follow the instructions of the Government of U. P. and the authority to approve the recommendations of the

Selection Committee rests with the Chairman/Vice -Chairman, Board of Governors who is the supreme authority in respect of proper functioning of the affairs of the college according to the directives of the Government of Uttar Pradesh.

17. A supplementary counter-affidavit has also been filed by the Registrar. Moti Lal Nehru Regional Engineering College, Allahabad. In the supplementary, counter-affidavit also, the same facts which have been stated in the counter-affidavit noted above, have been reiterated. Another supplementary counter-affidavit sworn by Dr. Ramashish Yadav Professor, Mechanical Engineering Department, Moti Lal Nehru Regional Engineering College. Allahabad has been filed to explain how the proceedings of the Selection Committee in which the petitioner appeared as a candidate for the post of Reader in the Department of Mechanical Engineering, was conducted and finalised. No new fact came from this supplementary counter-affidavit.

18. From the pleading of both the parties noted above, it is disclosed that there is no factual dispute between the two sides. Admittedly advertisement No. 1/94 was published in Times of India" dated 24th August, 1994 in which two posts of readers in the Department of Mechanical Engineering were advertised in which the petitioner Hari Saran Goyal is an applicant and he appeared before the Selection Committee and his name has been recommended by the Selection Committee and recommendation of the selection has been approved by the Vice-chairman of the Board of Governors, i.e., by the Secretary Technical Education Department Government of Uttar Pradesh who is ex-officio Vice-Chairman of the Board of Governor and the petitioner has been kept on waiting list against one of the vacancy and the second vacancy has been directed by the Selection Committee to keep for reserve category for Scheduled Caste (S.C.) and Scheduled Tribes (S.T.) and Other Backward Classes [O.B.C.). This fact has also gone uncontroverted that in Department of Applied Mechanics, the same advertisement No. 1/94 advertised 2 vacant posts for Readers whereas the Selection Committee, (Respondent No. 6) selected and recommended 3 suitable candidates and the recommendation of the Selection Committee has been approved by the Vice-Chairman of the Board of Governors. On this fact and on few other facts, the petitioner alleges arbitrariness and mala fide. We do not see utility of this aspect in this writ petition. The alleged irregularity in the selection of candidates in the Department of Applied Mechanics does not have bearing on the case of the selection of candidates in the Department of Mechanical Engineering. The fate of this writ petition rests on the examination or the propriety of the order keeping the petitioner on waiting list and readvertising the post of Reader in the Mechanical Engineering to be filled by candidates of reserved category.

19. The dispute now rests on decision of the following points :

(1) If the decision to keep the petitioner Hari Saran Goyal on waiting list against one of the two vacancies advertised in the Department of Mechanical Engineering

was mala fide and arbitrary.

(2) If the decision of the respondents keeping one of the two vacancies advertised in the advertisement No. 1/94 in the Department of Mechanical Engineering reserved for filling the same by the candidates of reserved candidates of Scheduled Caste (S.C.I, Scheduled Tribes (S.T.) and Other Backward Classes (O.B.C.) is bona fide act of the respondent.

(3) if the decision of the respondent to keep vacant and reserved one post of Reader in Mechanical Engineering out of two posts vacant advertised in Advertisement No. 1 /94 Is bad in the eye of law.

All the three questions are interconnected for the consideration of fact and law and since there are overlapping factual and legal positions applicable in the decision of all the three questions in hand so they are taken up together for consideration and decision.

20. The relevant advertisement No. 1/94 contained a foot note is reproduced below :

"Teaching posts sanctioned by U. P. Government and other administrative and Technical posts shall be reserved at the stage of direct recruitment as per Adhisuchana No. 488 (2)/XVII-V-I-1 (KA) 6-1994 of Vidhayee Anubhag-1 dated Lucknow March, 23, to in sub-section (5) in favour of persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens :

(a) in case of Scheduled Castes-- 21 percent

(b) in case of Scheduled Tribes-- 2 percent

(c) in case of other Backward Classes of citizens-- 27 percent.

Provided that the reservation under clause (c) shall not apply to the category of other Backward Classes of citizens specified in Scheduled II of this adhisuchana.

21. The learned counsel for the petitioner Mr. Ram Niwas Singh has vehemently criticised the decision of keeping one post out of two vacant posts of Reader in the Department of Mechanical Engineering Advertisement No. 1/94 a totally arbitrary and mala fide action of the respondents. Mr. Singh argued that the principle of reservation is not permissible in the field of technical and scientific education and the Regional Engineering College, Moti Lal Nehru Regional Engineering College, Allahabad is in character of a Scientific and Technical Education Institution, so there was no legality in keeping one of the two posts reserved for Scheduled Castes (S.C.) and Scheduled Tribes (S.T.) and Other Backward Classes (O.B.C.).

22. His further argument is that the decision was influenced by mala fide because in the other Department of Applied Mechanics where two posts of Reader were advertised by advertisement No. 1/94, no post was kept reserved for reserve category of Scheduled Caste (S.C.) and Scheduled Tribes (S.T.) and

other Backward Classes (O.B.C.) rather against two vacant post in the advertisement, the Selection Committee recommended three names and all the three have been approved by the Board of Governors which discloses that there was no genuine decision to apply the principle of reservation.

23. Mr. R. N. Singh further argued that since the post of Reader in the Department of Mechanical Engineering has not been claimed as a post sanctioned by the Government of Uttar Pradesh, so the foot note of the advertisement which said that the teaching post sanctioned by the U. P. Government shall be reserved for Scheduled Caste (S.C.I and Scheduled Tribes (S.T.) and other Backward Classes (O.B.C.) at the stage of direct recruitment, was not at all applicable. The petitioner alleged that this post was sanctioned post of the Central Government.

24. However, in the counter-affidavit the respondents have asserted that the post of Reader in the Department of Mechanical Engineering was sanctioned by the Government of U. P. The argument of Mr. R. N. Singh further proceeds that no reservation policy can be implemented unless there is roster for applying such reservation. Mr. R. N. Singh has argued that the State Government has issued notification u/s 3 (5) of U. P. Act No. IV of 1994 issuing a roster for applying the reservation under sub-section (1) of Section 3 of the U. P. Public Service (Reservation for S.C.. S.T and Other Backward Classes) Act, 1994. In the cases of the post of Reader in the Department of Mechanical Engineering advertised to be vacant in the advertisement No. 1/94 did not fall in the category of reservation, so the decision of the respondents to keep one of the two posts for reserved category is bad in the eye of law.

25. The argument of Mr. Singh further asserts that the post of Reader is in the scale of Rs. 3,700 - 5,700 which is higher than lowest of group "A" and exempted from the purview of reservation as Moti Lal Nehru, Regional Engineering College. Allahabad is technical and scientific institution and the post of Readers are of Technical and Scientific nature and also research oriented. Mr. Singh has taken help from letter No. 1116/Misc. 35 dated 20th October, 1994 of the Principal, Moti Lal Nehru Engineering College. Allahabad (Annexure-7 to the writ petition) which specified that the Rules of reservations were Inapplicable on the teaching post of the college. The Government of India by its office-memorandum dated 13.5.1994 (Annexure-8) has given exemption to Scientific and Technical posts from the purview of the reservation order from O.B.C. (Other Backward Classes).

26. Thus, the provisions of reservation which is taken help by the respondents for keeping one of two vacant posts of Reader in the Department of Mechanical Engineering for reserved category as per Annexure-12 to the writ petition is not permissible in the eye of law. Mr. Singh informs that the petitioner has filed representation to the Principal of the college against he being placed in the waiting list though the posts of Readers in the Mechanical Engineering is lying vacant but the respondents have not taken any decision/action on the

petitioner's representation. Mr. Singh has placed reliance on the following cases.

(1) Ashoka Kumar Thakur Vs. State of Bihar and others, .

(2) R.K. Sabharwal and others Vs. State of Punjab and others, .

(3) Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, .

(4) Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., .

(5) Vipin Agarwal v. University of Allahabad and others decided along With three other petitions (1997) 2 UPLBEC 1122.

27. Mr. S. N. Upadhyay. learned senior counsel appearing for the respondents has argued that the reservation policy is applicable in the Moti Lal Nehru Regional Engineering College, Allahabad which is an institution within control of the State of U. P. The State of Uttar Pradesh had issued the Government Order No. 1 Karmik No. 1-1994 dated 25th March, 1994 which was binding on all the Departments of the Government of Uttar Pradesh (Annexure-12 to the writ petition) and hence the respondents bona fide applied the principle of reservation and kept one of the two posts of Reader in Department of Mechanical Engineering In the reserved category. He asserts that there is no ingredient of mala fide in this case. In support he has placed reliance on the case of Major G.S. Sodhi Vs. Union of India (UOI), .

28. In the case of Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, , the points involved in the present writ petition are fully covered. For sake of clarity, the facts are quoted below :

"The University issued the employment notice in question inviting applications for a total of 77 posts which included 13 posts of Professors. 29 posts of Readers and 35 posts of Lecturers in different subjects ranging from Economics, Politics and Sociology to Physics, Pharmacy and Geology. The notice mentioned total number of reservation categorywise but not subjectwise as follows :

Professors-- Scheduled Castes-3, Scheduled Tribes-2 and VJ/NT-2.

Readers-- Scheduled Castes-6. Scheduled Tribes-4 and VJ/NT-2.

Lecturers-- Scheduled Castes-7, Scheduled Tribes-5 and VJ/NT-4.

A number of applications were received for the posts from candidates including the petitioners to both reserved and non-reserved castes for all the three categories of posts, viz., Professors, Readers and Lecturers. This advertisement was corrected by corrigendum of February 1, 1985. Thereafter a further employment notice for additional posts in all the three categories was issued on August 1, 1985 but we are not concerned with the same. Different Selection Committee in all 53 in number were constituted and they recommended 47 candidate for 53 posts. It appears that while recommending the selections, the committee also gave weightage to the candidates belonging to the reserved

castes. Thereafter, the executive counsel constituted a sub-committee to decide which posts should be reserved for the reserved castes. On the recommendation of the subcommittee and after taking into consideration the backlog of reservations the Executive Council decided to keep apart 17 posts and made permanent appointments only to 30 out of 47 candidates by its appointment orders, issued on March 30, 1985 for the academic year 1985-86. As regards 17 posts which were kept apart for reserved candidates, it decided to fill in the same by temporary appointments for those pending the availability of the suitable candidates from reserved castes.

It appears that against these appointments some social workers and organisations made representations to the Chancellor making a grievance both against the employment notice as well as the procedure followed in making the said appointments. By his order dated February 22, 1986, the Chancellor appointed a one-man committee u/s 76 of the Nagpur University Act, 1976 (hereinafter referred to as the "Act") to inquire into the matter. The Committee submitted its report on September 24, 1986 which was accepted by the Chancellor.

In the meanwhile, a batch of writ petitions was filed in the High Court challenging the employment notice on the ground that the non-obtaining of the recommendation from the Board of University Teacher and Research. ("B.U.R.T." for short) before issuing the employment notice was bad in law in view of the provisions of Section 32 (2) (iii) of the Act. The High Court accepting this contention quashed the employment notice and set aside the appointments to the posts which were challenged in those petitions. In all the petitions the Court also restrained the University from making any appointment without obtaining the recommendations from the B.U.R.T.

Taking into consideration both the report of the one man committee and also the decision of the High Court, the Chancellor directed the Vice-Chancellor to terminate the services of all the appointees including the appellants and accordingly the Vice-Chancellor issued orders of termination of services of the appellants and others similarly appointed on April 21, 1987. The termination orders mentioned four grounds as follows :

- (a) the reservation policy adopted by the University was contrary to Section 57 of the Act."
- (b) the decision of the Executive Council allocating all reserved posts to VIth plan posts was arbitrary and discriminatory.
- (c) the University had failed to comply with the mandatory provisions of Section 32 of the Act since it had not consulted the B.U.R.T.. and
- (d) that the employment notice was not in accordance with law.

It may be mentioned here that although the services were thus terminated by the said order the Vice-Chancellor on the same day issued another order in

exercise of his emergency powers u/s 11 (4) of the Act and appointed all the appellants and others to the same posts protecting their pay and allowance at the same time making it clear that the appointments were temporary.

We are concerned in this appeal only with two grounds as stated at the outset. The third ground, viz., whether the recommendations of B.U.R.T. were mandatory before the issuance of the employment notice was not pressed before Full Bench from which the present appeal arises. It appears that on the first ground, viz., whether the general reservation instead of the postwise reservation was Illegal, there was a difference of opinion between two Division Benches of the High Court. One Division Bench in Writ Petition No. 1876 of 1984 (hereinafter referred to as the "Bhakare"s case) decided on December 7, 1984 took the view that the postwise reservation was not necessary whereas another Division Bench different with the said view and sent the papers to the learned Chief Justice for referring the matter to a larger Bench and the issue referred to the larger Bench was as follows :

"Is non-reserving the posts of University teachers subjectwise in the employment notice a breach of letter and spirit of reservation policy contained in Section 77C read with Section" 57 of the Act?"

That being the only issue, the Full Bench was really called upon to answer it alone. However, thereafter by the consent of parties one more issue was raised before the Full Bench which is the second of the two questions which we have to decide in this appeal, viz., whether, notwithstanding the illegality of the general reservation, the service of the appellants were liable to be terminated. On the first issue, the Full Bench held the general, reservations were in breach of the provisions of the Act and against the reservation policy and, therefore, illegal. On the second issue, by majority the Full Bench held that since the appointments were not according to law from the beginning, the termination of the appellant"s services was legal."

29. The Apex Court view has been clarified in the following words "we are, therefore, in complete agreement with the view taken by the Full Bench that the employment notice dated 27.7.1984 was bad in law since it had failed to notify the reservations of the posts subjectwise and had mentioned only the total number of reserved posts without Indicating the particular posts so reserved subjectwise."

30. In the case of R.K. Sabharwal and others Vs. State of Punjab and others, , the Apex Court expressed its view In the following words :

"We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Caste/Scheduled Tribes and Other Backward Classes get

their percentage of reserved posts. The concept of "running account" in the impugned instruction has to be so interpreted that it does not result in excessive reservation. 16% of the posts are reserved for members of the Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Caste Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To Illustrate. first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total member of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical . quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the and the "running account" must come to an end thereafter. The vacancies arising in the cadre after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster-points, 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly if the persons holding the post at points 8 and 14 or 23 to 29 retire then these slots are to be filled from amongst the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation.

The expression "posts" and "vacancies" often used in the executive instructions providing for reservations, are rather problem. The word "post" means an appointment, job, office or employment. A position to which a person is appointed "vacancy" means an unoccupied post or office. The plain, meaning of the two expressions make it clear that there must be a "post" in existence to enable the "vacancy" to occur. The cadre strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment

can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of "vacancy" has no relevance in operating the percentage of reservation.

When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Caste/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeewan Reddy, J speaking for the majority in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , observed as under (Para 96] :

"Take a unit/service/cadre comprising 1,000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and other Backward Classes is 50% which means that out of the 1,000 posts 500 must be held by the members of these classes i.e., 270 by other Backward Classes. 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of O.B.Cs. in the unit/service/category is only 50. a shortfall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be checked altogether for a number of years until the number of members of all Backward Classes reaches 500, i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality or opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to other. For the above reason, we hold that for the purpose of supplying the rule of 5096 a year should be taken as the unit and not the entire strength of the cadre service or the unit as the case may be." (Stress)

31. The quoted observations clearly illustrate that the rule of 50% a year as a unit and not the entire strength of the cadre has been adopted to protect the right of the general category under clause (1) of Article 16 of the Constitution of India. These observations in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , are only in relation to posts which are filled initially in a cadre. The operation of a roster, for filling the cadre-strength, by itself ensures that the reservation remains within the 50% limit. Indira Sawhney's case is not the authority for the point that the roster survives after the cad re-strength is full and the percentage of reservation is achieved.

32. A Division Bench of the Allahabad High Court in J. C. Malik v. Union of India

and others (1978) 1 SLR 844. interpreted Railway Board's circular dated April 20, 1970 providing 15% reservations for the Scheduled Castes. The High Court held that the percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court, it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in the cadre are filled, then serious consequences would ensue and the general category is likely to suffer considerably. We set no infirmity in the view taken by the High Court.

33. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster-points are filled from amongst the Scheduled Castes/Scheduled Tribes candidates. 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1995, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50% vacancies. If 8% vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement, etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open- to the State Government to carry forward the point in a just and fair manner.

34. In *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,* it has been declared that reservation policy is not to be enforced in the field of scientific and technical research. The Moti Lal Nehru Regional Engineering College is admittedly a technical educational institution and there is no dispute to the fact that it has all India Character as it draws the teachers and students from all India basis.

35. This Court in the case of *Dr. Vipin Agarwal v. University of Allahabad and others*, decided along with four other petitions (1997) 2 UPLBEC 1122. taking support from the Apex Court view has concluded in paras 30 and 31 of the writ petition in the following words :

"It may again be mentioned that in the Judgment of the Lucknow Bench in *Dr. Rama Niwas Pandey's* case, there is no mention of the decision of the Hon'ble Supreme Court in *Dr. Anand Prakash Mishra and Dr. D. N. Shukla (supra)*. The attention of the Court was drawn by the learned counsel for the petitioner to yet another decision of the Lucknow Bench in Writ Petition No. 1016 of 1994 dated

20.8.1997. In this decision, the Division Bench has reiterated the earlier view in Dr. Rama Niwas Pandey's case "it is hereby declared that the U. P. Public Services (Reservation of S.C., S.T. and O.B.C.) Act. 1994 and the roster notified u/s 3 (5) of the said Act would not apply to the Universities governed by the U. P. State University Act". It may be mentioned that even this decision dated 20.3.1997 does not refer to any of the three decisions of the Supreme Court noticed in the preceding paragraph, learned counsel for the petitioner wanted that this Court should either follow the reasoning in the judgment dated 20.3.1997 and in Dr. Rama Niwas Pandey's case (supra), or refer the matter to Full Bench. As already adverted to above. the law laid down by the Supreme Court in the case of Dr. D. N. Shukla and Dr. Anand Prakash Misra leaves no scope for this Court to hold that the provisions of U. P. Act No. IV of 1994 will not be applicable for selection to the post of Readers and Lecturers in the State Universities, Likewise, for the aforesaid reasons, the provisions of U. P. Act No. IV of 1994 are not attracted to the post of "Professor" in the Universities administered through the State Universities Act. To repeat, the law laid down by the Supreme Court of India is binding on all Courts, hence the field being occupied by the Supreme Court verdict, the submission that the matter may go to Full Bench is totally misplaced. In Dr. D. N. Shukla's case which was a matter relating to Reader and Lecturers, it has been held by the Supreme Court that the posts have to be readvertised by the University as roster and rotation were necessary. The provisions contended in the U. P. Act No. IV of 1994 and the relevant G.O. will thus apply for the posts of Readers and Lecturers subject to the roster and rotation as directed by the Supreme Court.

In view of the aforesaid discussion the impugned advertisement No. 1/95 and 6/95 are quashed in so far as they relate to the posts of Professors. These two advertisement No. 1/95 and 6/95 are directed to be perused in so far as they relate to the vacant posts of Lecturers and Readers as on today subject to applying roster and rotation under the G.O. dated 19.4.1995 as modified by the Hon"ble Supreme Court in State of U. P. v. Dr. D. N. Shukla (supra)."

36. In the words of the Hon"ble Supreme Court, the reservation policy, if to apply, must contain postwise and subjectwise description of reserved posts. The advertisement in this case did not even disclose total number of posts to be reserved. It only contained the provision for application of reservation policy. Unless roster and rotation is fixed for applying the criteria of reservation, it cannot be applied in any advertisement. In the facts of the present writ petition, it is undisputed that a general and vague note at the foot of advertisement No. 1/94 was published that teaching posts sanctioned by U. P. Government and other Administrative and Technical Posts, shall be reserved for Scheduled Castes (S.C.), Scheduled Tribes (S.T.) and other Backward Caste (O.B.C.) at the stage of direct recruitment. Neither there was any specification of any posts muchless any subjectwise post kept for reserved category. This general nature of advertisement is against the provision of law as declared by the Hon"ble Court in the case of R.K. Sabharwal and others Vs. State of Punjab and others, and Dr.

Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others,

37. The petitioner has been found suitable by the Selection Committee but he has been recommended for being kept on the waiting list against one of the two vacant posts of Readers. Since we have held in foregoing paragraphs that the advertisement did not specify any reservation on the post of Reader In the Department of Mechanical Engineering, so the decision of the Selection Commission to keep one post out of two vacant posts of Readers In the Department of Mechanical Engineering for reserved category and consequently, readvertising the post for filling up from the reserved category is bad in eye of law and fit to be quashed. Consequently, the two posts advertised in advertisement No. 1/94 for Reader in the Department of Mechanical Engineering, were available for selecting two suitable candidates. The Selection Committee selected two candidates including the petitioner but left the petitioner to be accommodated only as waiting list candidate treating the second post as to be filled by the reserved category which has been found against law as noted above. So the claim of the petitioner to be accommodated against the vacant post of Readers in the Department of Mechanical Engineering will be in compliance of the terms of advertisement No. 1/94. After publication of advertisement, the change in the number of vacancies ostensibly for keeping the same for reserved category which has been held to be illegal and unjustified, must be treated to be available to the second candidate who was found suitable by the Selection Committee. Accordingly petitioner Hari Saran Goyal is found entitled to get the relief prayed for.

38. The writ petition succeeds and is allowed. The part of letter dated 22.9.1995 of respondent No. 6, Annexure-2 to the writ petition, directing the Principal of the college to readvertise the post of Mechanical Engineering for reserve candidates through the "Special Drive" recruitment and also advertisement dated 9.10.1995. Annexure-4 to the writ petition, are quashed. Let a mandamus go to the respondent to appoint the petitioner against the second available post of Reader in the Department of Mechanical Engineering advertised in advertisement No. 1/94. However, there is no order for costs.