
(1996) 05 AHC CK 0157
In the Allahabad High Court
Case No : C.M.W.P. No. 18298 of 1990

Mohd. Zaki Khan and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Constitution of India, 1950 — Article 163, 320
Uttar Pradesh Public Service Commission (Limitation of Functions) Regulations, 1954
— Regulation 3
Uttar Pradesh Sales Tax Officers (Grade-II) Service Rules, 1983 — Rule 5, 5(1), 5(2)

Citation : (1996) 3 UPLBEC 2042

Hon'ble Judges : Om Prakash, J;D.C. Srivastava, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Dismissed

Judgement

Om Prakash, J.—This petition raises a short but very interesting question whether 97 posts belonging to the cadre of the Sales Tax Officers, Grade II (for short, the cadre of STOs)-now Trade Tax Officers--in the State of U.P. were available for being filled up in May/June, 1988, when written examination was conducted by the U.P. Public Service Commission ("Commission" hereafter), result of which was declared on 10.5.1990 for filling up 50 posts of the said cadre (originally advertised only 33 Vacancies).

2. The State Government sent an intimation to the Commission for filling up 33 vacancies pertaining to the cadre of STOs vide letter dated 28.8.1984 which were later increased to 50. No exclusive examination was field for filling up such vacancies and the Commission held a combined examination for Upper Subordinate Services including the posts of the cadre of STOs. The Commission, therefore, caused an advertisement to be made in December, 1985 for holding the combined Upper Subordinate Service Examination which, inter alia, included the vacancies of the cadre of STOs. Pursuant to the said advertisement, written.

examination was held in May/June, 1988 and the result was declared on 10.5.1990. The Petitioners appeared in the said examination in connection with the vacancies of STOs. They were interviewed but failed.

3. Some developments took place before the declaration of the result of the combined Upper Subordinate Examination. 1985-86, detailed account of which is essential to appreciate the case of the Petitioners.

4. The case of the Petitioners as stated in Para 5 of the writ petition is that about 147 posts of STOs got accumulated but as against that big number of vacancies, the State Government sent an intimation to the Commission to fill up 33 vacancies only, which were later increased to 50. It is contended that the remaining 97 posts had been filled up by the State Government from amongst the departmental candidates in utter disregard of the rules on ad hoc basis and, therefore, those posts continued to be available in the year 1988, when the examination was held by the Commission and that being so, the Petitioners seek writ of mandamus directing the Respondents to fill those 97 posts from amongst the candidates, who appeared in the written examination, held in 1988. It is averred by the Petitioners that these 97 posts could be filled up only through direct recruitment by the Commission and that it was open to the State Government to make ad hoc appointments on such posts under certain administrative exigencies, but the State Government is not at all competent to fill up such posts substantively.

5. No counter-affidavit has been filed by the Commission, Respondent No. 3. On behalf of Respondents No. 1 and 2, a counter-affidavit was filed and later a detailed supplementary counter-affidavit was also filed on their behalf annexing the entire correspondence exchanged between the Sales Tax Department and the Commission for filling up a large number of vacancies. Annexure "A" to the supplementary counter-affidavit is a letter dated 11.10.1982 which was sent by the Commissioner, Sales Tax, U.P., Lucknow (Respondent No. 2) to the Joint Secretary of the Commission. In this letter, the Commissioner regrettably stated that as against the requisitions dated 25.9.1978 and 9.12.1981 for filling up 75 and 115 vacancies respectively, that is, 190 vacancies (75+115), the Commission assured to make 150 selected candidates available, that on such assurance, the Department sent a requisition for 40 vacancies representing the difference of 190 and 150, in addition to that, 23 vacancies arose after December, 1981 and thus a requisition of 68 vacancies (40+28) was sent to the Commission vide letter dated 16.9.1982, but the Commission made available only a select list of 75 candidates on 6.9.1982. In this letter, total vacancies were worked out at 218 (75+115+28). Of these vacancies, the Commission made a select list of 75 candidates available through the examination of 1988 and thus leaving behind the back-log of 143 vacancies (218-75). The Commissioner emphasising the urgency requested the Commission to fill up the back-log of 143 posts through emergency recruitment examination.

6. The Commissioner again sent a D. O. letter of October 16, 1982 (Annexure

"B" to the supplementary-counter-affidavit) to the Chairman of the Commission stating, inter alia:

(1)

(2)

(3)

(4) The total No. of vacancies (after taking into account the 75 selected candidates) of Sales Tax Officer-Gr. 2 are, therefore. $218-75 = 143$. A revised requisition for these 143 vacancies has been sent to the Secretary, U.P.P.S.C. vide this office letter No. Stha-2 General-144-4571/dated 11.10.82.

It may perhaps not be possible for the Commission to select 143 candidates for post of Sales Tax Officer Gr. 2 in the normal course expeditiously. My anxiety is that if this time also too much time is taken at the end of Commission in making selection, our entire drive for liquidating arrears of work and for boosting up revenue will be in jeopardy. I would, therefore, request that for filling up the big gap created by the above-mentioned shortage of 143 officers, an emergency selection may kindly be held by the Commission.

7. Handicapped by acute shortage of officers in the Department, the Commissioner again sent a letter dated November 25, 1982 (Annexure "C" to the supplementary counter-affidavit) to the Commission requesting the Commission to hold emergency examination to fill up the back-log of 143 vacancies. The Commissioner by letter dated February 5, 1985 (Annexure "D" to the supplementary counter-affidavit) again reminded the Commission for holding an emergency examination to fill up 143 vacancies. He further requested the Commission to fill up 33 more vacancies besides 143 vacancies. He also requested the Commission to inform categorically as to by which date the candidates would be available against the outstanding vacancies. Having no hope from the Commission for expeditious selection against 143 and 33 vacancies, the Commissioner sent a letter dated February 3, 1986 (Annexure "F" to the supplementary counter-affidavit) to the State Government desperately requesting that until the selections are made by the Commission, employees, if any retrenched from any department, be made available to the Sales Tax Department so that the urgent work of assessment, collection of the revenue, etc., may not suffer and loss of revenue may be avoided.

8. The Commissioner then suggested the State Government by letter of March 1, 1986 (Annexure "G" to the supplementary counter-affidavit) to fill up the vacancies from amongst the departmental candidates by holding an examination, as the Commission, in his opinion, would take considerable time in filling up 143 vacancies plus 33 vacancies of 1984.

9. Rule 5(1) falling in Part III bearing the heading "Recruitment" of the Uttar Pradesh Sales Tax Officers (Grade II) Service Rules, 1983 (for short, the Rules) provides that recruitment to the post of Sales Tax Officer (Grade II) shall be

made from the following sources:

- (i) by direct recruitment through the Commission,
- (ii) by promotion through the Commission, from amongst the permanent departmental candidates who have put in at least seven years service in the Department.

Rule 5 (2) of the Rules provides that recruitment from the two sources mentioned in Sub-rule (1) above shall be so arranged that, as far as may be, 75 percent of the posts in the cadre of Sales Tax Officers (Grade II) are held by the directly recruited candidates and 25% posts by promitees.

10. By letter dated March 31, 1986 (Annexure "H" to the supplementary counter-affidavit), the Commissioner requested the Secretary to the Government to refer to the former's earlier letter of 1.3.1986 and inform him the decision of the Government in the matter of taking out the vacancies required to be filled in by direct recruitment under Rule 5 (2) of the Rules, from the purview of the Commission for being filled up from amongst the departmental candidates by holding a Limited Departmental Examination.

11. By letter of May 2, 1986 (Annexure "I" to the supplementary counter-affidavit), the Commissioner again brought to the notice of the Government that the Commission was not in a position to make 143 candidates available against the requisitions upto the year 1983 and 33 candidates against the requisition sent in the year 1984. The Commissioner gathered the information that the Commission would possibly make 143 candidates available upto June, 1986, but in view of his past experience, the Commissioner doubted the version of the Commission. The Commissioner lamentably stated that there was no possibility that the Commission would make 143 candidates available during the calendar year 1986 and that recruitment against 33 vacancies notified by the Commissioner in 1984, would still take a longer time. He impressed upon the Government that due to the shortage of the officers, it was difficult to run the Department with efficiency and convenience. He, therefore, again emphasised on the Government to accord permission to fill up the vacancies resorting to the limited departmental examination.

12. Then the matter was taken up at the level of the Chief Secretary with the Commission by D.O. letter dated July 21, 1986 (Annexure "K" to the supplementary counter-affidavit). Giving the complete resume of the past correspondence, the D.O. letter (Annexure "K") was sent by the Chief Secretary to the Chairman of the Commission requesting the latter to give concurrence to the suggestion of the Department to hold limited departmental examination to fill up the vacancies to prevent loss of revenue and to ensure smooth working of the Department.

13. The Commissioner then sent the detailed proposed outline of the limited departmental examination to the Special Secretary (Finance), U.P. Shashan by

letter dated August 12, 1986 (Annexure "L" to the Supplementary counter-affidavit).

14. Then comes the much awaited sanction of the Cabinet vide letter dated December 11, 1986 (Annexure "M" to the supplementary counter-affidavit) for taking out the vacancies temporarily from the purview of the Commission and fill up them by limited departmental examination. In the letter (Annexure "M"), the number of vacancies was not specified and that necessitated another letter of December 17, 1986 (Annexure "N" to the supplementary counter-affidavit) by the Commissioner enquiring from the Government as to how many vacancies were taken out from the purview of the Commission. He stated in that letter that he sought permission for 97 posts, the break up of which is as follows:

1. 33 posts, requisition for which was sent to the Commission in the year 1984 for which the Commission made advertisement in April, 1986,
2. 20 newly created posts,
3. 15 vacancies arising on account of retirement and leaving the Department.
- 4 29 vacancies arising due to promotion Total 97

The Commissioner desired that the aforesaid 97 vacancies be taken out of the purview of the Commission for being filled up through the limited departmental examination.

15. By letter dated December 17, 1986 (Annexure "O" to the supplementary counter-affidavit), the Government informed the Commissioner that the Cabinet decision had related to 97 posts.

16. This is how Respondents No. 1 and 2 contend that 97 posts had been taken out from the purview of the Commission and they had been filled up through the limited departmental examination.

17. The question for consideration is whether the State Government is empowered to take out certain posts from the purview of the Commission.

18. Admittedly, 97 posts which have been filled up through the limited departmental examination were within the purview of the Commission and they were required to be filled in through direct recruitment under Rule 5 of the Rules. Article 320, Clause (1) of the Constitution provides that it shall be the duty of the State Public Service Commission to conduct examination for appointment to the services of the State. Clause (3) of Article 320 further provides that the State Public Service Commission shall be consulted in the matters enumerated in sub-clauses (a) to (e). Proviso to Article 320, Clause (3) insofar as is relevant, states that the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

19. Ordinarily, under Article 320, Clause (3), Sub-clause (a), the State Public Service Commission shall be consulted on all matters relating to method of recruitment to civil services and for civil posts but under the proviso to Clause (3) of Article 320, the Governor may make regulations specifying the matters in which it shall not be necessary for Public Service Commission to be consulted. The question is whether any regulations have been made by the Governor to avail the exception as carved out in the proviso to Clause (3) of Article 320. Our attention has been drawn to the Uttar Pradesh Public Service Commission (Limitation of Function) Regulation, 1954 (in short, the Regulations) which have been framed in exercise of the powers conferred by the proviso to Clause (3) of Article 320 of the Constitution in supersession of the earlier Regulation. Regulation (3) runs as follows:

3. It shall not be necessary for the Commission to be consulted on matters relating to methods of recruitment to civil services and posts, or the principles to be followed in making appointments to such services and posts, or the suitability of candidates for such appointments, in the following cases:

(a) When the appointing authority in respect of the service or post concerned is an authority other than the Governor, unless in any particular case, Government have directed or may after consultation with the Commission, direct that the service or post in question shall be within the purview of the Commission.

Note.--The services and posts mentioned in the Schedule appended to the U.P. Public Service Commission (Limitation of Functions) Regulations, 1941, as in force before the date of this notification shall continue to remain under the purview of the Commission until a direction to the contrary is issued by the Government, after consultation with the Commission.

(b) When the appointing authority in respect of the service or post concerned is the Governor and the maximum pay attached to that service or post does not exceed Rs. 200 per mensem or the Governor for any other reason directs, after consultation with the Commission, that the service or post in question shall be outside the purview of the Commission:

Provided that the Governor may in consultation with the Commission, place any particular service or post within the purview of the Commission, notwithstanding the fact that the appointing authority in respect thereof is the Governor and the maximum pay attached to the service or post does not exceed Rs. 200 per mensem.

(c) When the appointing authority in respect of the service or post concerned is the Governor or is an authority other than the Governor and the person concerned being directly appointed on ad hoc basis on or before the date notified by Government possessed requisite qualifications for regular appointment at the time of such ad hoc appointment and has completed three years" continuous service on or after the said date.

(Emphasis" supplied)

20. From the second part of Clause (b) of Regulation (3), it is amply clear that the Governor after consultation with the Commission may direct for any other reason that the service or post in question shall be outside the purview of the Commission. The Cabinet had taken the decision to take out 97 posts from the purview of the Commission which was communicated to the Commissioner, Respondent No. 2 by letters dated December 11, 1986 and December 17, 1986 (Annexures "M" & "O" to the supplementary counter-affidavit respectively). Under Article 163 of the Constitution, the Governor is required to act on the aid and advice of the Council of Ministers headed by the Chief Minister. The decision of the Council of Ministers headed by the Chief Minister, that is the Cabinet has to be accepted by the Governor. The Petitioners have not challenged the validity of the Cabinet decision, communicated to the Commissioner by letters (Annexures "M" & "O" to the supplementary counter-affidavit) which was duly served upon the counsel for the Petitioners on 10.4.1996, i.e., on the same date when it was sworn by Sri Sharad Chandra Goel, Trade Tax Officer in the office of the Commissioner, Trade Tax on behalf of Respondents Nos. 1 and 2. No supplementary affidavit has been filed by the Petitioners controverting the averments made in the supplementary counter-affidavit dated 10.4.1996 nor the Petitioners have challenged the validity of Regulation 3 of the Regulations. Therefore, the case of Respondents Nos. 1 and 2 that the Cabinet had taken the decision to take out 97 posts from the purview of the Commission, remains uncontroverted, there is no argument from the side of the Petitioners that the Governor refused to accept such decision of the Cabinet; nor that is permissible under the Constitution. We, therefore, hold from these uncontroverted facts that 97 posts of Trade Tax Officer, Grade II had been taken out from the purview of the Commission by the State Government on the basis of the decision of the Cabinet. Such decision is required to be taken with the consultation of the Commission. The word "consultation" cannot be equated with concurrence. Though the Commission did not concur but the State Government did consult the Commission on this issue before taking such decision.

21. Decks cleared for the Department after the decision of the State Government to fill up 97 vacancies from amongst the departmental candidates, the Department did so fill up 97 posts on 20.6.1987. The Department laid down certain norms for holding the departmental examination and filled up those vacancies from amongst the senior Class III officials of the Department following those norms. Mode of selection and appointment of the officials of the Department against 97 posts have not been challenged by the Petitioners and no quashing of their appointments has been sought in the petition. When the petition was filed, the Petitioners in the beginning sought relief (i) for quashing the entire proceedings for selecting 97 candidates for the posts of STOs by Departmental Selection Committee appointed by the Government, but later the said relief was deleted on 23.2.1993. From Para 5 of the third supplementary affidavit, it is clear that relief No. (i) was deleted on the request of the

Petitioners. Otherwise also, learned Counsel for the Petitioners repeatedly argued before us that the impleadment of the appointees against 97 posts was not necessary, inasmuch as quashing of their appointment was not sought by the Petitioners. We, therefore, do not touch upon the validity of the appointments made against 97 posts on 20.6.1987 which is possible only when such appointees are impleaded.

22. Lengthy correspondence exchanged between the State Government and Commission as reproduced above, spells out cogent circumstances for the decision taking out 97 posts from the purview of the Commission. Since the validity of the decision communicated to the Commissioner by Annexures "M" & "O" to the supplementary counter-affidavit has not been challenged by the Petitioners, that deserves due cognizance.

23. The contention of the Petitioners is that ad hoc appointments made by Respondents No. 1 and 2 would last till the regularly selected candidates become available from the Commission. There is a fallacy in this argument, inasmuch as 97 posts had been taken out from the purview of the Commission and the State Government was free to fill up those posts after laying down certain norms consistent to the constitutional provisions and other laws. Since 97 posts ceased to be within the purview of the Commission, no mandamus can issue in favour of the Petitioners to fill up those posts by the candidates who appeared in the combined Upper Subordinate Examination, 1985-86. Until 97 posts already taken out from the purview of the Commission though temporarily as stated in the Government letter dated December 11, 1986 (Annexure "M" to the supplementary counter-affidavit), are brought back within the purview of the Commission, no mandamus can be issued as prayed for by the Petitioner.

24. In support of his contention, Sri Madhyan relied on State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, . In this case, the Bihar State Subordinate Services Selection Board (for short, the Board) without notifying the number of vacancies made an advertisement inviting applications from the unemployed graduates for appointment to the post of Assistants in the Secretariat and other connected offices of the Government of Bihar against the vacancies which existed upto the year 1985-86. Vide communication dated 25.8.1987, the Department of Personnel and Administrative Reforms intimated to the Secretary of the Board 357 vacancies and that was why the Board recommended selection of 319 candidates only on 31.7.1990. Since the vacancies available up till 31.12.1988 were not disclosed to the Board despite inquiries, no further appointments could be made. Before the High Court, the Union of un-successful candidates pleaded that normal practice being followed by the State over the years had been that the vacancies available till the publication of the result were filled up by the candidates brought on the merit list and, therefore, all the vacancies existing on the date of the publication of the result in 1990 should be filled up from the empanelled candidates from the select list. The State resisted the claim of the Petitioner saying that simply

because vacancies had arisen during the period 1985-90, that fact alone could not clothe the empanelled candidates on the select list with any right to appointment or claim adjustment against the vacancies arising after 1983. The High Court accepted the claim of the Petitioners and directed the State Government to fill up all the vacancies as available on the date of publication of the result in July, 1990. The Supreme Court found the order of the High Court unsustainable on the reasoning that since no examination has been held since 1977, persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for no fault of theirs. But the Supreme Court observed further in the interest of justice : (Para 11 at p. 739):

At the same time, due to the callousness of the State in holding the examination in 1987 for the vacancies advertised in 1985 and declaring the result almost three years later in 1990 has caused great hardship to the successful candidates....

The Supreme Court further observed : (Para 12 at p. 739):

...We, accordingly, set aside that partition of the judgment but uphold the judgment in all other respects including the filling up of the vacancies which existed till 31.12.1984...

25. Relying on the case of Secretariat Assistants (*supra*), Sri Madhyan urges that the vacancies existing not only upto the date of examination but even the vacancies arising within a year from the date of examination can be filled up from amongst the candidates according to the merit list, who took up the combined Upper Subordinate Services Examination, 1985-86. Sri Madhyan also relied on *Dr. Brahm Deo Sharma v. State of U.P. and Anr.* 1990 Lab IC 984, in which a Division Bench of this Court held that the candidates mentioned in the "waiting list" can be appointed against the vacancies till the new selection is held, provided the vacancy was available during the year of selection.

26. In our view, the aforementioned authorities are of no help to the Petitioners, in the case in hand, inasmuch as the position is materially different in the instant writ petition as 97 vacancies of STOs had been taken out by the State Government from the purview of the Commission and they had been filled up by the State Government in accordance with the norms laid down in that behalf. 97 vacancies having gone out from the purview of the Commission, the question of issuing any mandamus to the Respondents to fill up those vacancies from the merit list prepared by the Commission, does not arise.

27. In the case of *I.J. Divakar and Others Vs. Government of Andhra Pradesh and Another*, , Andhra Pradesh Public Service Commission invited applications for the posts of Junior Engineer in Andhra Pradesh Engineering Service and other allied service in the year 1977. The viva voce test was held between November 78 and March, 1979. After the completion of the viva voce test, the Commission was in the process of finalising the select list. On September 14, 1979. the

Government of Andhra Pradesh issued two G.Os. By the first G.O. issued in exercise of the powers conferred by the proviso to Clause (3) of Article 320 of the Constitution, the Government excluded from the purview of the Commission all the appointments made by direct recruitment to any post in any category at all levels in the State and Subordinate Services and which were continuing temporarily on August 9, 1979. By another G.O. of the even date, the Government of Andhra Pradesh regularised the services of all temporary Government servants who were appointed by direct recruitment to any category of posts and were continuing in service as on August 9, 1979 without subjecting them to any test, written or oral, of course upon certain conditions being satisfied by the temporary employees. The Appellants were the candidates for the posts of Junior Engineer for which the interview test continued upto March, 1979. They filed petition in the Andhra Pradesh Administrative Tribunal seeking a direction calling upon the Commission to finalise the select list of candidates from amongst the candidates who had applied for the posts of Junior Engineer and who had appeared at the viva voce test and for a further direction to the Government of Andhra Pradesh to make appointments of those finding place in the merit list from amongst the Appellants. To achieve this result, the Appellants challenged the validity of the two G.Os., the first withdrawing the posts from the purview of the Commission and second regularising the services of the temporary Government servants. The Supreme Court upholding the decision of the Administrative Tribunal which substantially rejected the case of the Appellants, held "...that inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. He only offers to be considered for the post. His application only makes him eligible for being considered for the post. It does not create any right in the candidate to the post."

28. The law so laid down by the Supreme Court in the case of *I. O. Diwakar* (supra) still holds the field. In *Dr. P.K. Jaiswal v. Mrs. Debi Mukherjee and Ors.* (1992) 2 UPLBEC 1070, the Supreme Court reiterated:

If the Commission issues an advertisement at the behest of the Government and pursuant thereto calls a candidate for interview, the candidate has a right to be considered for selection but not a right to be selected or to appointment to the post in question.

29. In *P. K. Jaiswal* (supra), the question was whether the Government can withdraw the requisition sent to the Commission for initiating the process of selection. The factual background giving rise to that question is thus : One Mr. Jaisani-a direct recruit was holding the post of Assistant Director General (Prevention of Food Adulteration) in the Ministry of Health and Family Welfare of the Government of India. He passed away and a vacancy arose which was required to be filled by direct recruitment. A request was, therefore, sent to the Union Public Service Commission sometime in November, 1989 for selection of a candidate for filling up that vacancy. Before the Commission could advertise the

post, the Union Government informed the Commission by letter dated December 29, 1989 not to proceed with the process of selection because it was examining the question of opening up an avenue for promotion from Assistant Secretary to the post in question. Notwithstanding the said communication, the Commission advertised the post in January, 1990. The Appellant applied for the same and was called for an interview on December 13, 1990. Then Mrs. Debi Mukherjee who was then serving as Assistant Secretary and was hoping to be promoted as Assistant Director General on the amendment of the rules, approached the Central Administrative Tribunal, New Delhi, which stayed the process of selection by an interim order. It is in this backdrop, the Court said that no right to selection had accrued to the Appellant.

30. Simply because the Petitioners in the case in hand appeared in the interview test held for the combined Upper Subordinate Examination, 1985-86, they do not acquire any right to be selected on the ground that there existed more vacancies at the time of the examination or at the time of advertisement. Their position is much worse, because 97 vacancies of the STOs had been taken out by the State Government from the purview of the Commission.

31. Before parting with the case, we are constrained to observe that the functioning of the Commission leaves much to be desired. From the lengthy correspondence which took place between the State Government and the Commission as reproduced above, it is amply demonstrated that the inactivity of the Commission virtually forced the Sales Tax Department to resort to the limited departmental examination. From the synopsis furnished by the State Government, it is seen that a requisition dated 25.9.1978 was sent to the Commission for 75 vacancies, examination for which was conducted after two years in 1980 and result was declared in 1982 and the candidates were made available in June, 1983. Roughly, the Commission took about five years to complete the process. The State Government again sent a requisition dated 11.10.82 for 143 vacancies for which examination was conducted in 1984 and the result was declared in 1986 and the candidates were made available in April/May, 1987. It again took five years. For want of officers, the position in the Department worsened as the drive to collect revenue virtually came to a grinding halt. The Department eventually requested the Commission to hold an emergency recruitment examination to fill up the back-log of vacancies. Ultimately, the Chief Secretary of the State of U.P. requested the Chairman of the Commission through a D.O. Letter to accept the suggestion of the Department to hold the limited departmental examination to fill up a large number of vacancies. The reply of the Chairman of the Commission dated August 11, 1986 to the D.O. Letter dated July 21, 1986 of the Chief Secretary of the State of U.P. is made an annexure to the supplementary counter-affidavit, filed on behalf of Respondents No. 1 and 2. Material portions of the said reply which amply demonstrates the inefficient functioning of the Commission are extracted below:

There has, undoubtedly, been very inordinate delay. I also admit that it would, at

least, partly be due to sloth. I am trying that this aspect is adequately taken care of and there is no repetition.

But posts of Sales Tax Officers are amongst the many for which an examination known as combined Upper Subordinate Services Examinations is periodically (not annually) is held. We hold this examination as and when requisition from different departments are received by us. There may sometimes be a considerable gap between the requisition of department and the others....

The number of applications for the combined examination of 1983 was around 50,000. You are aware of the acute inadequacies of staff in this Commission. The receipt, registration and scrutiny of the applications is a gigantic task and our staff and the postal staff have worked overnight to cope with it. It becomes worse when the task has to be assigned to daily wage workers. Consequently, a considerable gap between the last date of receipt of applications and the holding of examination became inevitable.

You are also aware that the Commission's unit record machine had become old and unserviceable. That threw our whole programme of examinations out of gear. That is the primary reason why we have not been able to honour our promise....

(emphasis supplied).

32. Broadly, the Chairman of the Commission pointed out the following reasons which according to him, delayed the selection:

(1) Combined Upper Subordinate Services Examination is not held annually but periodically as and when the requisition from all the Departments are received by the Commission.

(2) Inadequacy of staff.

(3) Mechanical apparatus running out of working order.

33. The Commission is a constitutional authority and the Chairman and the Members manning the Commission are constitutional functionaries. It is highly regrettable that the examination for various services should stuck up for the petty and avoidable reasons. So far as the receipt of requisition from different departments is concerned, we fail to understand why a time-limit cannot be fixed by the Commission for that. The departments may be asked to send requisition within inflexible time-limit and if requisition is not sent by some of the departments within that time-limit, then the examination may be held in respect of the requisition already received from other departments. One department of the State Government should not suffer from the inaction of the another department. If one department--not so important as the other from the point of view of public utility--sleeps over the matter and does not send requisition for quite sometime, then we see no good reason to await requisitions from all departments for an indefinite period. The examination cannot be postponed on

that ground indefinitely. This may not be the only solution of this type of problem. The Commission is capable to devise other solutions to tackle such obstacles.

34. Inadequacy of staff can hardly be pleaded by a constitutional authority-like the Commission--as an excuse for not discharging most important functions timely and expeditiously assigned to it. Similarly, the breakdown of the mechanical apparatus and equipment does not sound a good reason for inordinate delay.

35. The onerous task of holding examination is assigned to the Commission to maintain the public faith in the impartial selection process. If the examination is delayed on account of such excuses, the public faith in the Commission--an august body--will not only be completely destroyed, but that would often force the Head of Departments--otherwise reluctant to involve in selection process--to hold examinations departmentwise to keep the administrative wheel moving, which may in course of time, give rise to an unprecedented service scam in the province like other scams--well known to the nation currently.

36. When the Union Public Service Commission entrusted with the enormous job of holding the central services examination for the whole nation, can conclude the process of selection on the dot, we fail to understand why the Commission of U.P. cannot model itself on that pattern. The Commission-Respondent No. 2--should endeavour to devise the methodology which may help concluded the selection process within the time frame to obviate the situation like this forcing the State Government to take out posts from the purview of the Commission. The Commission is well aware of the size and enormity of its work and it should have the staff matching for the Job instead of expressing its helplessness. The Commission will do better if it approaches the State Government to allocate adequate funds for the employment of adequate staff to maintain the efficiency.

37. This is not the only example of inordinate delay on the part of the Commission but the Commission has been failing in completing other examinations as well timely.

38. Some officials who got selected through the limited departmental examination, have made applications seeking their impleadment. Such applications are rejected, inasmuch as their appointments are not in Jeopardy, because that have not been challenged by the Petitioners.

39. The petition, therefore, falls and is dismissed.