

(1991) 11 BOM CK 0031

In the Bombay High Court

Case No : Transferred Writ Petitions No's. 3346, 3343, 3342, 3336, 3334, 3338, 3332, 3341, 3345, 3333 and 3331 of 1991

Pramod Madhukarrao Padole and another

APPELLANT

Vs

Chancellor, Nagpur University and others

RESPONDENT

Date of Decision : 01-11-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 16, 16(1)

Citation : (1991) MhLj 1487

Hon'ble Judges : M. S. Deshpande, J;B. U. Wahane, J;B. N. Srikrishna, J

Bench : Full Bench

Advocate : Sunil V. Manohar with S. C. Dhamadhikari, for the Appellant; Arvind Bobde, Advocate-General, with S. K. Sanyal, S. G Aney and B. P. Pandya, for the Respondent

Final Decision : Allowed

Judgement

1. These 11 writ petitions under Article 226 of the Constitution of India, which had been originally filed at Nagpur, have been referred to me under clause 36 of the Letters Patent in view of the difference of opinion between two learned Judges of the Division Bench (Deshpande and Wahane, JJ.), who heard the said writ petitions. While Deshpande, J. was of the view that these writ petitions ought to be allowed, and the Rules granted therein made absolute, the other learned Judge, Wahane, J., took the view that these writ petitions ought to be dismissed, and the Rules granted therein be discharged.

2. The Division Bench has formulated the points of difference, on which my opinion, as the third Judge, is sought under clause 36 of the Letters Patent. The points of difference are as follows:-

"(1) Whether there can be reservation of posts in any of the three cadres of Professors, Readers and Lecturers, where there is a solitary post in a particular discipline.

(2) Whether the reservation to be made must be only with reference to the posts in the cadres, available in a particular discipline, subject only to the availability of more than one post.

(3) Whether grouping would be permissible only of the posts and appointments, if there be more than one in a particular discipline, or grouping can be done of the posts and appointment of a single post together with similar single posts in different disciplines."

3. In order to appreciate the controversy, it would be necessary to state a few salient facts and the background in which these petitions were filed.

4. The Nagpur University is a university governed by the Nagpur University Act, 1974. (The Nagpur University shall, hereinafter, for the sake of brevity, be referred to as ""the university""). The university had published an Employment Notice dated July 27, 1984, for the posts of 13 Professors, 29 Readers and 35 Lecturers in different subjects. Though the said employment notice mentioned the total number of reservations in the categories of Professors, Readers and Lecturers, it did not indicate the reservations subject-wise. Selection committees were constituted for selection of candidates and 47 candidates were recommended for selection. The Executive Council of the university decided to set apart 17 posts and made permanent appointments of 30 of the 47 selected candidates by Appointment Orders issued on March 30, 1985, in the academic year 1985-86. The 17 posts were set apart for Reserved Candidates to be filled by making temporary appointments pending the availability of suitable candidates from backward classes. At this point of time, there were several representations made by organisation representing the interests of persons belonging to backward classes, that their interests had not been properly safeguarded in making these appointments. Acting on the basis of these representations, the Chancellor of the university appointed a one-man committee (Justice Patel Committee) u/s 76 of the Nagpur University Act. This committee was required to enquire into the matter and make appropriate recommendations by its report. The Chancellor accepted the report submitted by this committee on September 24, 1986.

5. In the meantime, the employment notice itself was challenged in some writ petitions on the ground that the recommendations of the Board of University Teaching And Research (BUTR for short) had not been obtained before issuing the employment notice. This Court quashed the employment notice and set aside the appointments made to the posts in respect of which challenges had been raised in the pending writ petitions. The university was restrained from making any appointments to such posts without obtaining the recommendations of the BUTR. Acting upon the report of the Patel Committee, the Chancellor directed the Vice-Chancellor to terminate the appointments of all such appointees. The Vice-Chancellor issued orders terminating the services of all the appointees who had been appointed on April 21, 1987. Acting under his emergency powers u/s 11(4) of the Nagpur University Act, the Vice-Chancellor, by another order issued on the

same date, appointed the previous incumbents to the same posts, protecting their pay and allowances, though, under the express stipulation that such appointments were temporary. A Division Bench of this Court in Writ Petition No. 1876 of 1984 (Bhakare's case) decided on December 7, 1984, took the view that post-wise reservations were not necessary. Another Division Bench differed with this- view and a reference came to be made to the Full Bench. The Full Bench in Suresh Chandra Verma and Others Vs. The Chancellor, Nagpur University, Bombay and Others, , held that any advertisement issued u/s 57(4)(a) of the Nagpur University Act, must specify the posts for which reservation is made and an advertisement that does not specify the reserved posts with reference to the subjects would not be in accordance with law. The challenge based on absence of consultation with BUTR was not pressed before the Full Bench. Though the Full Bench took the view that there was violation of principles of natural justice, as the Patel Committee Report, on which the Chancellor had decided to terminate the services of the petitioner, had not been disclosed to the petitioner, and that there was infraction of section 57(5) of the Nagpur University Act, as no opportunity for being heard was given to the affected persons, the Full Bench did not regard this as consequential. The Full Bench held that non-consultation with the BUTR was not the subject-matter of the enquiry by the Patel Committee, and, since appointments of the petitioners had been made consequent to their applications for posts pursuant to the advertisement which was found to be illegal, the Chancellor had no alternative but to direct the termination of the services of the petitioners.

6. The decision of the Full Bench in Dr. Suresh Chandra Verma's case was taken to the Supreme Court in appeal. The Supreme Court in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, , held that the advertisement of the employment notice for appointment of teaching staff should indicate clearly the number of reserved posts subject-wise, and that mere mention in the advertisement of total number of reserved posts would not be sufficient as non-indication of the posts subject-wise would defeat the purpose for which the applications were invited from the Reserved Category candidates, and, consequently, negates the object of the reservation policy indicated by section 57(4)(d) of the Nagpur University Act, which clearly requires the selection committee to interview and adjudge the merits of each candidate and recommend him or her for appointment to the general post and the reserved post, if any, advertised. The issue as to absence of consultation with the BUTR was not raised before the Supreme Court. The Supreme Court agreed with the Full Bench totally and held that the termination of the service of the appellants before it was in compliance with section 57(5) of the Nagpur University Act. The Supreme Court rejected the contention based on the rule of audi alteram partem by holding that the said rule did not apply in such cases, and, therefore, there was no breach of the principles of natural justice. The appeal, thus, came to be dismissed. This judgment of the Supreme Court is of considerable relevance in deciding this group of petitions, and I shall advert to it at a later stage.

7. Three fresh Employment Notices, one for the posts of Professors, one for the posts of Readers and the third for the posts of Lecturers, were issued by the university. Out of the 18 posts of Professors which were advertised in the employment notice, 5 posts were reserved subject-wise for Scheduled Castes, 3 for Scheduled Tribes and 1 for Denotified Tribe/Nomadic Tribe (DT/NT for short). These posts came to be advertised on the basis of 100 point roster, which was prepared for each category on the basis of the recommendations of an expert committee. Out of the 34 posts of Readers advertised, 9 were reserved for Scheduled Caste candidates, 5 for Scheduled Tribe candidates and 3 for DT/NT candidates. The rest were for Open Category candidates. Out of the 49 posts of Lecturers advertised by the Employment Notice, reservations were made subject-wise, 10 for Scheduled Castes, 9 for Scheduled Tribes and 5 for DT/NT, leaving 25 posts available for Open Category candidates. The validity of these fresh employment notices has been challenged by the present group of writ petitions on several grounds. The Division Bench negated the challenge to the employment notices and the reservation of the posts indicated therein on several other grounds. With regard to the points referred to me for my opinion, however, there was difference of opinion between the learned Judges of the Division Bench.

8. The stand of the petitioners has been forcefully represented before me by Mr. Manohar, while the contentions of the State of Maharashtra and the university were ably canvassed by the learned Advocate-General and Mr.S.G.Aney, respectively.

9. Section 57(4) of the Nagpur University Act requires every post of a Teacher to be filled by selection after due and wide advertisement according to a draft approved by the Executive Council. The advertisement is required to state the particulars of the minimum and other additional qualifications, if any, the emoluments, the number of posts to be filled and the number of posts which are reserved for the members of the Scheduled Castes or Scheduled Tribes.

10. By Amending Act (Act No. 32 of 1978), sub-section (3) was added to section 7 of the Nagpur University Act. This sub-section specifically enables the State Government or the university to make provision for the reservation of appointments or posts, either under the university or under the affiliated colleges or recognized institutions, in favour of the members of the Scheduled Castes and Scheduled Tribes, which, in its opinion, are not adequately represented in services under the university or under such colleges or institutions. The amending Act simultaneously added clauses (25-a) and (25-b) in section 2 by which the expressions "Scheduled Castes" and "Scheduled Tribes" were defined. It also added section 77-C, which gives powers to the State Government to give to the university suitable directions with regard to reservation of posts in favour of merribers of the Backward Classes.

11. The Government of Maharashtra issued a G. R. dated 30th March, 1981, in exercise of its power u/s 77C(2) of the Act, issuing detailed instructions, to all the non-agricultural universities in Maharashtra, with regard to the reservation of

posts to be made in favour of Scheduled Castes and Scheduled Tribes, while making appointments to the teaching and non-teaching posts in the university affiliated colleges and recognized institutions. The university is obliged, u/s 77-C(1), to take action to implement these directions. It could have been done by adoption of appropriately framed statutes u/s 37(xvii). Pending adoption of the statutes, the Vice-Chancellor of the university, in exercise of his powers u/s 11(6) (b) of the Act, issued Direction No. 25 dated 3rd September, 1981 to give effect to the Government Resolution. A draft statute on the subject, as prepared by the Senate, was submitted for the assent of the Chancellor. The Chancellor, after having it examined by the Education Department, suggested some modifications and directed that the same be resubmitted to him after the requisite amendments by placing it before the appropriate bodies of the university. Since all this procedure was going to consume some time, in order to act in the meantime, the Chancellor directed that, in the interim period, matters concerning reservation of posts to Scheduled Castes, Scheduled Tribes, Denotified Tribes and Nomadic Tribes in the university and affiliated colleges and recognised institutions be regulated by the Vice-Chancellor in exercise of his powers u/s 11(6)(b) of the Nagpur University Act, keeping in view the Chancellor's directive contained in his earlier letter dated 16th April, 1987. After due consideration of all material facts, on 29th May, 1987, the Vice-Chancellor, acting u/s 11(6)(b) of the Nagpur University Act, 1974, issued a directive providing that all matters pertaining to reservation for teaching and non-teaching posts under the university, affiliated colleges and recognized institutions shall, henceforth, be regulated as indicated in the said directive. Clause (i) of the directive prescribes the percentage of vacancies. Clause (iv) provides for carry forward. Clause (v) indicates the method of working out cadre-wise and community-wise backlog. Clause (ix) provides for maintenance of model roster indicating the points reserved for backward classes as detailed in the appendices. Clause (xii) provides for "grouping of posting", and states "in the case of posts filled by direct recruitment, isolated post and small cadres in the same class and carrying same status, salary and qualification in the same department should be grouped together for the purposes of reservation of vacancies for the members of the backward classes". Though the said directive makes detailed rules with regard to several other aspects on reservations, the above are the most relevant ones for the purposes of the present petitions.

12. In order effectively to implement the directive dated 29th May, 1987 issued u/s 11(6)(b) of the Nagpur University Act, the Executive Council of the University, in an emergent meeting held on 7th July, 1987, passed a resolution, in which guidelines for preparation of a roster for Professors, Readers and Lecturers in the university was adopted. The guidelines, insofar as relevant to the present discussion, are the following:-

"1. A hundred point model roster be accepted by the University. This Roster should be prepared by the office in chronological order according to the dates of vacancies /creation of posts.

"2. Separate Roster should be prepared for each of the three cadres viz. Professors, Readers and Lecturers. All vacancies in University Departments and conducted colleges should be taken together into consideration while preparing the Roster. In the roster, vacancies in respect of which all formalities such as BUTR recommendations, Executive Council consideration, qualifications etc. are complete and which are not tagged or involved in the Court cases and are ripe in all respects for advertisement, be included.

"3. The vacancies in the three cadres viz. Professors, Readers and Lecturers be prepared in chronological order i.e. in accordance with chronological sequence of dates on which the vacancies occurred.

"4. The posts which are created by the Executive Council as sanctioned by the U.G.C. be also arranged in the same chronological order. When more than one posts are (sic) created on the same date, the sequence of posts as mentioned in the sanctioning letter of the U.G.C. be accepted as the sequence for considering their creation. In such cases, the dates on which the Executive Council resolved to create the post as per recommendation in respect of various plans should be deemed to be the date of creation and the same order be maintained.

"5. The post of Director, L.I.T. and Principal, University College of Law should be included in the cadre of Professor; and the post of Principal, University College of Education should be included in the cadre of Reader because these posts are on par with Professor and Reader respectively in respect of pay scales, qualifications, etc.

"6.....

"7. Regarding the date which should be accepted as the date of vacancy in respect of the teachers whose services were terminated by the Chancellor vide his directive dated 16-4-1987 the Council resolved that since these appointments were made in response to the advertisement dated 27-7-1984 and since the Chancellor has held this advertisement as void and quashed the appointments made thereunder, the very base for treating these appointments as appointments is demolished, and as such, it must be held that these appointments were, for all legal purposes, never made at all. Therefore, the dates on which the vacancy originally occurred should be treated as the dates of vacancies for these appointments. This will also hold good for such posts which were vacated by the appointees after joining.

"8. While advertising the posts, it has to be borne in mind that posts not exceeding fifty percent of the total posts being advertised at one time, can be allotted to the reserved categories. The total number of posts for the backward category candidates will have to be calculated on the basis of backlog and roster point (current reservation). If it becomes necessary, for this purpose to transfer certain posts to backward communities, open posts, serially in the roster, be converted into reserved categories in the order of SC, ST and DT/NT.

"9.....

"10....."

13. The employment notices, which are impugned in the present petitions, have been issued pursuant to these guidelines. Though guideline No .2 indicated that a separate roster should be prepared for each of the three cadres, viz., Professors, Readers and Lecturers, it provides that "all vacancies in University Departments and conducted colleges should be taken together into consideration while preparing the roster". Guideline No. 3 specifically provides that the vacancies in the three cadres, viz., Professors, Readers and Lecturers, be prepared in chronological order, i.e., in accordance with chronological sequence of dates on which the vacancies occurred. Guideline No. 5 directs that the post of Director L.I.T. and Principal, University College of Law, should be included in the cadre of Professors and the post of Principal, University College of Education, should be included in the cadre of Reader because these posts are on par with Professor and Reader, respectively, in respect of pay-scales, Qualifications etc. Thus, in accordance with these guidelines, the university applied the reservation policy to each cadre separately. Professors, Readers and Lecturers in the university, irrespective of the department or discipline to which they were attached, were clubbed together and they were treated as three respective cadres of Professor, Reader and Lecturer. The vacancies which have occurred in chronological order were subjected to the model roster, and in accordance with the model roster, the various posts of Professor, Reader and Lecturer were considered to be reserved or belonging to Open Category in accordance with the appropriate point in the roster and advertised, accordingly, in the employment notices.

14. Two specific challenges have been raised. First, it is contended that the categorization of all Professors in the university as one cadre, all Readers as belonging to one cadre and all Lecturers to a single cadre is erroneous and contrary to the intendment of the statute. It is contended on behalf of the petitioners that the unit of reservation should be a department or discipline, and, therefore, the cadre could consist only of the Teachers (Professors, Readers or Lecturers) in that department or discipline. Thus, in each department or discipline, there would be separate cadres of Professors, Readers and Lecturers. It is only after identifying the three separate cadres in each department / discipline in this fashion that the reservation policy could be implemented vis-a-vis such cadre, is the submission of the petitioners. Since this has not been done, the petitioners submit that the employment notices are bad, contrary to the Nagpur University Act and also unconstitutional, and that they go beyond the provision of Article 16(4) of the Constitution of India.

15. The next, and, by far, more important, challenge to the employment notices is that solitary or isolated posts in each department/discipline cannot be subjected to reservation, and, therefore, the model roster could not have been applied to such solitary/isolated posts. Application of the principle of reservation

or, as its corollary, the model roster, would result in 100% reservation in any given recruitment year, and, thus, such reservation would go beyond the provision of Article 16(4) and be contrary to the guaranteed fundamental rights in Article 16(1) and (2), following the principle adopted by the Supreme Court in *M.R. Balaji and Others Vs. State of Mysore*, . It was also contended that, in view of the clear pronouncement of the Supreme Court in *Chakradhar Paswan Vs. State of Bihar and Ors*, , it is not permissible to reserve a solitary/isolated post in favour of Backward Class candidate, as it would be contrary to the enabling power of the State under Article 16(4) of the Constitution of India and that it would be hit by the vice of excessive reservation.

16. The learned Advocate-General and Mr. Aney vehemently rejoin that the Supreme Court has not laid down in *Chakradhar's* case (*supra*) any blanket proposition of law as canvassed by the petitioners. They also contend that the rule, against making reservation in respect of more than 50% of the vacancies in a given year of recruitment, is not absolute and has been considerably diluted. Reliance is placed on the subsequent pronouncements of the Supreme Court in *State of Kerala and Another Vs. N.M. Thomas and Others*, and *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, in support thereof. It was also contended that Article 16(4) contemplated reservation by two methods one in terms of "appointment" and the other in terms of "post". The learned Advocate-General, placing reliance on *The General Manager, Southern Railway Vs. Rangachari*, , argued that Article 16(4) itself contemplated that the State could make provision for reservation of appointments. The expression "appointment", in the submission of the learned Advocate-General, was wide enough to accommodate within its sweep vacancies. Thus, the Respondents contend that even a solitary post or an isolated post could become the subject-matter of reservation in alternate year or on alternate occasions of the vacancies arising. They derive support for this submission from the observations of a Division Bench of this Court in *Bhude Girls Education Society vs. Education Officer, Z. P., Nagpur*, 1989 LabJ.C. 1437. Reliance was also placed on the Constituent Assembly Debate, Volume VII, pp. 672 to 704 in this connection. The argument based on the concept of the correct unit for application of the reservation policy and the connotation of a "cadre" was met by placing reliance on the observations of the Supreme Court in *S.B. Mathur and Others Vs. Chief Justice of Delhi High Court and Others*, to the effect that the employer has enough leeway to categorize posts into different cadres based on responsibility, pay-scale and qualifications, and, so long as the posts categorized into one cadre were not totally disparate in any of these aspects, such categorization into one cadre would be permissible and could be acted upon. Thus, in the submission of the respondents, the guidelines constituting Professors, Readers and Lecturers throughout the university into three separate cadres, respectively, were not only justified but was perfectly permissible both under the statute and the Constitution.

17. The rival contentions made by the learned counsel and the learned Advocate-General need careful evaluation in the light of the statutory and constitutional provisions and the illumination shed thereupon by the judicial pronouncements of the apex Court and the High Courts. I have been taken through the two differing judgments of the two learned Judges of the Division Bench and, in the bargain, elevated to vertiginous heights of poetry and singed by scorching rhetoric. I shall, however, endeavour to decide the matter in my own prosaic and pedestrian manner.

18. The fasciculus of Articles 14, 15 and 16 has been judicially described as the Code of Equality contained in Chapter in, pertaining to Fundamental Rights. Article 14 enjoins upon the State not to deny to any person equality before the law or equal protection of laws. Articles 15 and 16 are special cases of this general rule. Article 15 prohibits discrimination by the State on grounds only of religion, race, caste, sex, place of birth. However, clause (4) of Article 15 provides that nothing in the said Article or clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Article 16, which is of relevance to us, reads as follows:-

"16. Equality of opportunity in matters of public employment.- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

19. It is seen from Article 16 that there is a guaranteed Fundamental Right of equality of opportunity in matters of public employment in clause (1), of prohibition against discrimination on grounds only of religion, race, caste, sex,

descent, place of birth, residence or any of them in clause (2), but, at the same time, clause (3) enables Parliament to make laws prescribing requirements as to residence applicable to employment to any class or classes of employment or appointment. Then comes clause (4), which declares that nothing in the article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class citizen which, in the opinion of the State, is not adequately represented in the services under State. We need not consider clause (5), as it is not relevant for the purposes of the present petitions.

20. Whether clause (4) of Article 16 is an "exception" or "proviso" to the general rule contained in clauses (1) and (2) thereof, or whether it is a "facet" of the general rule as to equality in public employment, has been the subject of much debate. Before taking up a discussion on this aspect, it would be necessary to notice Article 335 of the Constitution, which mandates the State to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or State.

21. In *General Manager, Southern Railway and another vs. Rangachari*, AIR 1962 SC 36, the Supreme Court had to consider the validity of reservation of selection posts in Railway Service in favour of members of Scheduled Castes and Scheduled Tribes on the ground that such reservations did not fall within the scope of clause (4) of Article 16. The Supreme Court took the view that clause (4) of Article 16 had to be construed in the nature of exception or proviso to Article 16(1) (see the observations of Wanchoo, J., in paragraph 31). The majority judgment of Gajendragadkar, J. (on behalf of himself, Sarkar and Das Gupta, JJ.), took the view that Article 16(4) prescribed a condition precedent for invoking the power conferred by it, and that the condition precedent was that the State ought to be satisfied that any backward class citizen is adequately represented in service. The condition precedent may, therefore, apply to the numerical or qualitative inadequacy of representation in the service. The advancement of the socially and economically backward class citizens requires not only that they have adequate representation in initial appointments but also adequate representation in selection posts in the services as well. The Supreme Court, therefore, held that the power of reservation in favour of the State under Article 16(4) could apply not only at the initial stage of recruitment but also for providing reservation in the selection posts. The dissenting judgment of Wanchoo, J., in terms, held that clause (4) is an exception to the general rule postulated in the earlier clauses (1) and (2) and, hence, the proviso or the exception should not be interpreted so liberally as to destroy the fundamental right itself to which it is a proviso or exception (vide paragraph 31). The observation of the other dissenting Judge, Ayyangar, J. (vide paragraph 39) also supports this view.

22. The majority view was indicated by Gajendragadkar, J., in the following words:-

"It is true that in providing for the reservation of appointments or posts under Article 16(4) the State has to take into consideration the claims of the members of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to "make any reservation at the cost of efficiency of administration. That undoubtedly is the effect of Article 335. Reservation of appointments or posts may theoretically and conceivably mean some impairment of efficiency; but the risk involved in sacrificing efficiency of administration must, always be borne in mind when any State sets about making a provision for reservation of appointments or posts. It is also true that the reservation which can be made under Article 16(4) is intended merely, to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. In exercising, the powers under Article 16(4) the problem of adequate representation of the backward class of citizens must be fairly and objectively considered and an attempt must always be made to strike a reasonable balance between the claims of backward classes and the claims of other employees as well as the important consideration of the efficiency of administration; but, in the present case, as we have already seen, the challenge to the validity of the impugned circulars is based on the assumption that the said circulars are outside Art. 16(4) because the posts referred to in the said Article are posts outside the cadre of services and in any case, do not include selection posts. Since, in our opinion this assumption is not well founded we must hold that the impugned circulars are not unconstitutional."

23. The view of the Supreme Court in this judgment was that the power of the State to make reservations, under clause (4) of Article 16, had to be exercised in a reasonable manner so as not to create monopolies, but that it could include, within its sweep, reservation both at the initial stage and promotion by selection also.

24. In *M.R. Balaji and Others Vs. State of Mysore*, , which arose in the context of the reservation of seats in medical and engineering colleges to the extent of 65% in favour of backward classes, purportedly made by the State under clause (4) of Article 15, the Supreme Court struck down the reservation as beyond the limit permissible under clause (4) of Article 15. The Court observed :

"... A special provision contemplated by Article 15(4), like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be

subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50 per cent; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case, (paragraph 34)"

25. Again, in paragraph 37, the Supreme Court equated the sweep of Article 15(4) to that of 16(4) and said:

"... Therefore, what is true in regard to Article 15(4) is equally true in regard to Article 16(4). There can be no doubt that the Constitution-makers assumed, as they were entitled to, that while making adequate reservation under Article 16(4), care would be taken not to provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general "competition in a large field and by creating widespread dissatisfaction amongst the employees, materially affect efficiency. Therefore, like the special provision improperly made under Article 15(4), reservation made under Article 16(4) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution. In this connection, it is necessary to emphasise that Article 15(4) like Article 16(4) is an enabling provision; it does not impose an obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary."

Thus, it is clear that these observations of the Supreme Court in Rangachari, as emphasized and reiterated in Balaji, lead to the conclusion that, while clauses (1) and (2) of Article 16 confer fundamental rights of equality of opportunity in matters relating to employment under the State, and, conversely, prohibit discrimination on grounds only of religion, caste etc., clause (4) of Article 16, is an exception to the general rule of equality postulated in clauses (1) and (2) of Article 16. Since an exception cannot override the rule itself, the Supreme Court indicated the maximum extent of reservation which could legitimately be made under clause (4) of Article 16 and that too consistently with the mandate in Article 335 of the Constitution.

26. In T. Devadasan Vs. The Union of India (UOI) and Another, , Article 16 once again came up for consideration by the Supreme Court. By a majority of four to one, the Supreme Court held that Article 16 confers a fundamental right on an individual citizen seeking employment or appointment to an office under the State, and that, in order to effectuate that right, each year of recruitment must be considered by itself, and the reservation for backward communities each year should not be so excessive to create a monopoly or to disturb unduly the legitimate claims of other communities. The majority took the view that article 16(4) was a "proviso" or an "exception" to 16(1) and the words in the opening part of Article 16(4) "Nothing in this Article shall prevent.." could not be so construed as to invalidate the express guarantee contained in Article 16(1) and (2). The Supreme Court cited with approval and reiterated the rule in Balaji "s case. The dissenting Judge, Subba Rao, J., however felt that the provision of

Article 16(4) was not in the nature of an exception but a "special facet" of the right of equality conferred under Article 16(1).

27. In *C.A. Rajendran Vs. Union of India (UOI) and Others*, , a Five-Bench of the Supreme Court unanimously reiterated the rule in *Balaji's* case and approved of the proposition in *Rangachari's* case that clause (4) of Article 16 was an exceptional clause and not an independent provision and had to be strictly construed. It also approved unanimously the principle enunciated in *Balaji's* case that what is true in regard to Article 16(4) is equally true in regard to Article 15(4).

28. In *State of Kerala and Another Vs. N.M. Thomas and Others*, , the validity of special provisions made in Rule 13-AA of the Kerala State and Subordinate Services Rules, 1958, which extended by two years" exemption from passing the department test to the members of the backward classes, was upheld. The Supreme Court appears to have taken a somewhat different view than what was taken hitherto. The decision in *Thomas's* case was rendered by a Seven-Judge Bench, Fazal Ali. J., and Krishna Iyer, J., who formed part of the majority did not consider clause (4) of Article 16 as an exception to the general rule under clauses (1) and (2) of Article 16. They were inclined to read the power of reservation in Article 16(1) itself, and, hence, they were of the view that clause (4) of Article 16 was an independent provision, made out of abundant caution, and not merely an exception to the general rule. Mathew, J., who formed one of the Judges of the majority, took the view that interpreting clause (4) of Article 16 as an exception to clause (1) of Article 16 would be the result of taking a sterile view of the equality of opportunity visualized in Article 16(1), without taking into account the social, economic, educational background of the members of Scheduled Castes and Scheduled Tribes. If the equality of opportunity guaranteed under Article 16(1) meant effective material equality, then Article 16(4) was not an exception to Article 16(1), but was only an emphatic way of putting the extent to which equality of opportunity could be carried, viz., even up to the point of making reservation, according to learned Judge. The majority in this case accepted the minority view of Subba Rao, J., in *Devadasan*.

29. On the basis of the observations made by three of the learned Judges as indicated hereinabove, could it be considered that the principle adopted by the Supreme Court in *Balaji* reiterated in *Devadasan* and reiterated unanimously by the Five-Judge Bench in *Rajendran* has been overruled or departed from?

30. Interestingly, in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, , Krishna Iyer, J., who had agreed with the majority in *Thomas's* case, that clause (4) of Article 16 was a "facet" of the article and not in the nature of exception or a proviso, in terms, relied upon *Balaji* and *Devadasan* and appears to have gone back on his earlier view, and held that Article 16(4) is an exception to the general rule contained in Article 16(1) and (2). While considering whether Scheduled Castes and Scheduled Tribes were

already duly represented in specific categories in service, the Court, in this case, reaffirmed the principle of reservation of posts under Article 16(4) and upheld the carry forward rule. It emphasized that, upon consideration of the overall picture, the maximum of 50% per reserved quota, in their totality, was fair and reasonable. It appears that, though the rule in *Balaji and Devadasan* was shaken by the observations in *Thomas*, subsequent pronouncements in *Akhil Bharatiya Soshit Karmachari Sangh (Railway)* by the learned and eminent Judge, who formed one of the majority in *Thomas*, reiterating that Article 16(4) is in the nature of an exception or proviso, appear to have put the rule in *Balaji* on an even keel and firmly anchored it. This is indicated in the subsequent judgment in *State of Maharashtra vs. S. Y. Gorge*, C. A. No. 41J 7 of J 984 decided on 19th October, 1984, where reservation of post to the extent of 80% was held to be bad, excessive and destructive of the principle of equality of opportunity. The following observations of Venkataramiah, J., (as he then was) in *K.C. Vasanth Kumar and Another Vs. State of Karnataka*, , after analyzing the 7 opinions given in *Thomas*" case, dispel doubts on this issue:-

"After carefully going through all the seven opinions in the above case, it is difficult to hold that the settled view of this Court that the reservation under Article 15(4) or Article 16(4) could not be more than 50% has been unsettled by a majority on the Bench which decided this case."

31. The last in the series of these cases is the judgment in *Chakradhar Paswan Vs. State of Bihar and Ors*, , where the Supreme Court, in terms, said:

"We are not aware of any decision of this Court where excessive reservation of appointments or posts in favour of any backward class of citizens to the extent of 100% has been upheld, except in the application of the carry forward rule. Article 16(4) is an exception to Article 16(1) and Article 16(2) and therefore the power to make a special provision for reservation of posts and appointments in favour of the backward classes must not be so excessive which would in effect efface the guarantee of equal opportunity in the matter of public employment or at best make it illusory. In *M.R. Balaji and Others Vs. State of Mysore*, , which has now become locus classicus on the subject, the Court attempted to impose a constitutional limit to the extent of preference, not on "narrower ground of reservation" but on broader grounds of policy. It spoke of "adjusting" the "interests of the weaker sections of society to the interests of the community as a whole" and declared that a "formula must be evolved which would strike a reasonable balance between the several relevant considerations". While striking down as unconstitutional government order by which 68% of the seats in educational institutions were reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes on the ground of excessive reservation and as a fraud on the Constitution, the Court observed (at p. 663 of AIR):

""Speaking generally and in a broad way, a special provision should be less than 50 per cent; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case."

"It is quite obvious that the observations in Balaji about 50% limit were not to be taken as a precise formula." "

32. There is further reiteration in paragraph 13:

""Once the power to make reservation in favour of scheduled castes and scheduled tribes is exercised, it must necessarily follow that a roster pointwise for the purpose of vacancies for which reservation has been made, must be brought into effect and in order to do full justice, a carry forward rule must be so applied that in any particular year, there is not more than 50% reservation. According to the 50 point roster, admittedly, the post of Deputy Director (Homoeopathic), was the first vacancy in the cadre of Deputy Directors and therefore it had to be treated as general i.e. unreserved."

The Court quoted with approval the note of caution sounded in K. C. Vasanth Kumar's case at page 1531 and observed :-

"The State exists to serve its people. There are some services where expertise and skill are of the essence. For example, a hospital run by the State serves the ailing members of the public who need medical aid. Medical services directly affect and deal with the health and life of the populace. Professional expertise, born of knowledge and experience, of a high degree of technical knowledge and operational skill is required of pilots and aviation engineers. The lives of citizens depend on such persons. There are other similar fields of governmental activity where professional, technological, scientific or other special skill is called for. In such services or posts under the Union or States, we think merit alone must be the sole and decisive consideration for appointments."

33. A survey and conspectus of these judgments indicate that Balaji and Devadasan still continue to be good law. The power of reservation under clause (4) is an exception or proviso to the general rule postulated in clauses (1) and (2) of Article 16; the exception or proviso cannot be so interpreted, nor could the power exercised thereunder be so wide, as to destroy the fundamental rights guaranteed under clauses (1) and (2) of Article 16. This aperçu must govern the perspective in appreciating the rival contentions. This view derives considerable support from the decision of the Full Bench of the Karnataka High Court in Dr. Rajkumar and others vs. Gulbarga University and others, AIR 1990 Kar. 320.

34. Though a raging controversy has been raised as to the exact connotation of the "Cadre" to which the rule of reservation should apply, the Supreme Court judgment in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, , contains a pointer.

35. The University had purported to follow the reservation policy as indicated in the directive of the Vice-Chancellor and by applying it to the totality of posts in the three categories, Professors, Readers and Lecturers. The validity of this action came to be called in question, and, in deciding the appeal, the Supreme Court observed (vide paragraph 7) :

"The argument based on section 57(4)(a) of the (Nagpur University) Act to support the procedure adopted by the University is, according to us, not well merited. The contention is that since section 57(4)(a) requires the University to state in the advertisement only the total number of posts and the number of reserved posts and not postwise, i.e., subjectwise, the employment notice in question was not bad in law. "According to us, the word "post" used in the context has a relation to the faculty, discipline, or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subject-wise.

""Emphasis supplied

These observations of the Supreme Court, in the very case of the present respondents, indicate, in no uncertain terms, that the unit for application of the reservation rule would be discipline or subject. That is precisely the reason why the Supreme Court held that the employment notice which, without giving the break-up, subject-wise or discipline-wise of the reserved post, generally indicated the reserved post in the three separate cadres of Professors, Readers and Lecturers was illegal and was, therefore, liable to be set aside. It is, thus, clear that the unit of reservation should be "subject" or "discipline". This conclusion is also supported by the manner in which the expression "department" has been defined in section 2(9) of the Nagpur University Act. This section defines "department" to mean a department designated to be so by the statutes with reference to a subject or a group of subjects.

36. Taking a cue from the observation of the Supreme Court in Dr. Suresh Chandra Verma's case (supra), in the context of reservations to the university posts, the rule of reservation should be applied disciplinewise or subject-wise.

37. The directive of the Vice-Chancellor dated 29th May, 1987, bringing into effect the directions as to reservation policy issued by the G. R. of the Government of Maharashtra, specially stated [vide clause (i)]:

""The following percentages of vacancies occurring in each of the various services and cadres under the University, affiliated colleges and the recognized institutions which are filled by direct recruitment shall be reserved for members of each of the section of backward classes as follows:-..."

Cause (v) which refers to backlog also requires the backlog to be worked out "cadrewise". Clause (xii), which talks of grouping or posting, in term, says: "In the case of posts filled by direct recruitment isolated posts and small cadres in the same class and carrying same status, salary and qualification in the same department, should be grouped together for the purpose of reservation of vacancies for the members of the backward classes." (Emphasis added). Thus, the emphasis throughout is on "cadre".

38. What, then, is a cadre? Judgments of the two learned Judges are replete with references to the dictionary meaning and judicial dicta as to the connotation of

this expression. The expression "cadre" need not mean the entire strength of service. It could also mean a part of service sanctioned as a separate unit (see the interpretation given by the Supreme Court to Fundamental Rule 9(4) in G.R. Luthra, Additional District Judge, Delhi Vs. LT. Governor, Delhi and Others, . Again in Dr. Chakradhar Paswan's case (supra), the Supreme Court observed:

"... In service jurisprudence, the term "cadre" has a definite legal connotation. In the legal sense, the word "cadre" is not synonymous with "service". Fundamental R. 9(4) defines the word "cadre" to mean the strength or a service or part of a service sanctioned as a separate unit."

Interpreted in the light of the observations of the Supreme Court in Dr. Suresh Chandra Verma's case, the cadre or unit which should be subjected to the application of the rule of reservation, at least so far as the University is concerned, should be the department, subject or discipline.

39. If it is held that the posts of Professors, Lecturers and Readers in each department formed three distinct cadres, there would be no difficulty in applying the reservation policy. Both the learned Judges (Deshpande and Wahane, JJ.) are agreed in the view that special qualifications required for holding a particular post do not, per se, make the post an isolated post or take it out of the cadre, for the simple reason that, though several posts may require separate specializations, the qualification, responsibility and the pay-scales applicable to each of the specialized course would generally be the same, barring the specialization required. Therefore, the specialization, per se, would not take the post out of the cadre. I agree that it would not be proper to treat a specialized post as an isolated post on the ground that it requires a different specialization. All such posts would be part of a cadre and would be subject to reservation.

40. The next question is, whether there should be reservation where the cadre consists of a single post. In my view, since much of the debate centred on the judgment of the Supreme Court in Dr. Chakradhar Paswan's case, a detailed discussion thereof is called for.

41. In Dr. Chakradhar Paswan's case, the Directorate of Indigenous Medicines, Health Department, was created with the post of a Director and three posts of Deputy Directors, Homoeopathic, Unani and Ayurvedic. All the posts were Class I Posts. The pay-scale of the post of Director was the highest while the three posts of Deputy Directors carried the same pay-scale. The Supreme Court took the view that the posts of Director and Deputy Directors in the Directorate did not belong to a unified grade but that the three posts of Deputy Directors could be grouped together for the purpose of determining the question of quantum of reservation. The Supreme Court, while conceding that it was open to the Government to constitute as many cadres in any particular service as it may choose according to administrative convenience and expediency, had, however, this to say with regard to the constitution of a joint cadre:

"... it cannot be said that the establishment of the Directorate constituted the

formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service. It is manifest that the post of the Director of Indigenous Medicines, which is the highest post in the Directorate carried on a higher grade or scale, could not possibly be equated with those of the Deputy Directors on a lower grade or scale."

The Supreme Court rejected the argument of the appellant that even a single post could be subjected to the 50 point roster in the following words :

"Another serious infirmity in the argument of the learned counsel for the appellant is that it overlooks the basic principle that if there is only one post in the cadre, there can be no reservation under Art. 16(4) of the Constitution. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court in *M.R. Balaji and Others Vs. State of Mysore*, can be up to 50%. The Government cannot, for instance, declare that the post of the Director of Indigenous Medicines shall be reserved for candidates belonging to scheduled castes. The Directorate is a para-medical service with Director as its head and the three Deputy Directors belonging to three distinct and separate disciplines viz. Homoeopathic, Unani and Ayurvedic under him. In the para-medical system the three posts of Deputy Directors pertain to three distinct systems and therefore each of them is an isolated post by itself. The same principle should, we think, as in the case of the Director, apply. It is a moot point whether the isolated posts like those of the Deputy Directors can be subjected to the 50 point roster by the rotational system. We refrain from expressing any opinion on this aspect, as it does not arise in the present case. Assuming that the 50 point roster applies, admittedly, the first vacancy in the cadre of Deputy Directors was that of Deputy Director (Homoeopathic) and it had to be treated as unreserved, the second reserved and the third unreserved. The first vacancy of the Deputy Director (Homoeopathic) in the cadre being treated as unreserved according to the roster, had to be thrown open to all. A candidate belonging to the scheduled caste had therefore to compete with others "

The Supreme Court then considered and held that the three posts of Deputy Directors of Homoeopathic, Unani and Ayurvedic Medicines were distinct and separate as they pertained to different disciplines and each one was an isolated post by itself, carried the same cadre, and that there could be created an isolated post even if it is carried in the same cadre. The Supreme Court then gave the following illustration:

"... Professors in medical colleges are carried on the same grade or scale of pay but the posts of Professor of Cardiology, Professor of Surgery, Professors of Gynaecology pertain to particular disciplines and therefore each is an isolated post."

After reiterating the rule in *Balaji* and the principle that clause (4) of Article 16 must be read as an exception contained in Article 16(1), the Supreme Court held that, if the power to make the reservation in favour of the Scheduled Castes and Scheduled Tribes could be exercised, then it would necessarily follow that a reservation had to be also in accordance with the model roster.

42. The case of *Arati Ray Choudhary vs. Union of India*, AIR 1974 SC 532, was pressed into service before the Supreme Court in *Chakradhar*'s case as having laid down a rule that even an isolated or solitary post could be subjected to reservation by application of the roster by reserving the first vacancy in favour of the open category and thereafter, by alternating, in favour of the reserved candidates and open category. The Supreme Court distinguished the decision in *Arati Ray Choudhary*'s case by pointing out that, in that case, there were admittedly two posts of Head Mistresses in the cadre, and, therefore, there was no difficulty in applying the principle of reservation to the cadre. The said case, according to the Supreme Court, turned on the application of carry forward rule and was clearly distinguishable on facts. If at all there is any doubt as to what is the ratio of *Chakradhar Paswan*'s case, the observations of the Supreme Court in paragraph 16 clinch the issue. Says the Supreme Court:

"It is quite clear after the decision in *Devadasans* case that no reservation could be made under Art. 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Art. 16(1) and 16(2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation, which would come under Art. 16(4) presupposes the availability of at least more than one post in that cadre."

(Emphasis supplied)

43. After having carefully and anxiously considered the judgment in *Chakradhar Paswan*'s case, I am unable to accede to the submission of the learned Advocate-General, ably supported by Mr. Aney, that *Arati Ray Choudhary*'s case lays down any contrary principle. *Chakradhar Paswan*'s case unmistakably lays down that, where a cadre consists of a single post, there could be no reservation qua that post, and that any reservation thereof would be beyond Article 16(4) as it amounts to 100% reservation, contrary to the law laid down in *Balaji* and *Devadasan*.

44. The learned Advocate-General and Mr. Aney relied upon the observations of the Division Bench of this Court in paragraph 14 of the judgment in *Bhide Girls Education Society vs. Education Officer, Z. P., Nagpur and other*., 1989 Lab.I.C. 1437. The observations are to the following effect:

"Thus as far as the roster system is concerned, it has been approved. The carrying forward business which has been envisaged under the roster is an

answer to the vice of excessive reservation inasmuch as it neutralises the concept of excessive reservation at a particular point of time in regard to the post. There may be only one post, but if the vacancy occurs to that post periodically, then the one post gives rise to more than one vacancies and that is how the vice of excessive reservation is neutralised."

This judgment was delivered on 11th March, 1988 and the Supreme Court delivered its judgment in Chakradhar Paswan's case on 8th March, 1988. Thus, the Division Bench did not have the views of the Supreme Court in Chakradhar Paswan's case before them. There is no reference to the law laid down by the Supreme Court in Chakradhar Paswan's case for this obvious reason. In my view, the law laid down in Chakradhar Paswan's case is clear and unmistakable, and, with great respect to the Division Bench, which decided Bhide's case, I consider myself bound by the law enunciated by the Supreme Court in Chakradhar Paswan's case, notwithstanding the observations, somewhat contrary, in Bhide's case. I am unable to find any support in the decision of the Supreme Court in Rangachari's case to the argument of the learned Advocate-General based upon distinction between "appointments" and "posts" that the reservation is permissible even in case of a single post by the mode of alternation. The view taken in Dr. Rajkumar's case by the Full Bench of the Karnataka High Court also supports my reading of Chakradhar Paswan's case.

45. That leaves the last controversy posed before me, with regard to grouping of posts. In my view, there should be no difficulty on this count. The topic of grouping is governed by clause (xii) of the Vice-Chancellor's directive dated 29th May, 1987. The said directive clearly provides that isolated post "in the same department" should be grouped together for the purpose of reservation of vacancy for the members of the backward classes, when posts are filled up by direct recruitment. The expression "department" is defined by section 2(9) to mean a department designated to be so by statutes with reference to a subject or a group of subjects. In my judgment, therefore, there cannot be grouping of isolated posts from one cadre, in a distinct subject or discipline, with an isolated post in a different department, subject or discipline. The rule permits grouping of isolated posts only if they are within the same department. For example, the cadre of Professor in any discipline might have a Professor, who has specialized qualification. Though I agree with the view of Deshpande, J., that the specialized qualification does not render such a post an isolated post, even if it were to be held an isolated post, there would be no difficulty in grouping such isolated posts under clause (xii) of the directive of the Vice-Chancellor, provided they are in the same department/subjects discipline.

46. In the result, my opinion on the points of difference, referred to me, is as follows:-

(i) There cannot be reservation of posts in any of the three cadres of Professors, Readers and Lecturers, where there is a solitary post in a particular discipline.

(ii) Reservation must be made only with reference to the posts in the cadres, available in a particular discipline, subject only to the availability of more than one post.

(iii) Grouping would be permissible only of the posts and appointments, if there be more than one in a particular discipline. Grouping cannot be done of the posts and appointment of a single post together with similar single posts in different disciplines.

47. The application of the above principle would lead to the result that the three employment notices would be vitiated on account of reservation of posts which could not have been reserved and for making reservations in the category of Professors, Readers and Lecturers, irrespective of the discipline in which the cadre arose. Inasmuch as the rosters have not been prepared discipline-wise and cadre-wise, within the permissible limit, the rosters prepared for the three categories of Professors, Readers and Lecturers and the three employment notices issued in July and August, 1987, would also have to be struck down. I, therefore, agree with the order proposed by my learned brother, Deshpande, J., and I make the following order:-

(a) Rule made absolute in Transferred Writ Petition No. 3346 of 1991 (from Nagpur Bench Writ Petition No. 1671 of 1987), Transferred Writ Petition No. 3343 of 1991 (from Nagpur Bench Writ Petition No. 1603 of 1987) and Transferred Writ Petition No. 3342 of 1991 (from Nagpur Bench Writ Petition No. 1663 of 1987), and the concerned Employment Notice No. GA/D/2-87 pertaining to the posts of Lecturers and the roster, upon which the said notice is based, are hereby quashed and set aside.

(b) Rule issued in Transferred Writ Petition No. 3336 of 1991 (from Nagpur Bench Writ Petition No. 501 of 1990), Transferred Writ Petition No. 3334 of 1991 (from Nagpur Bench Writ Petition No. 705 of 1990), Transferred Writ Petition No. 3338 of 1991 (from Nagpur Bench Writ Petition No. 332 of 1990) and Transferred Writ Petition No. 3332 of 1991 (from Nagpur Bench Writ Petition No. 1702 of 1987) is made absolute and the Employment Notice No. GA/D/2-87 pertaining to the posts of Readers and the roster, upon which it is based, are quashed and set aside.

(c) Rule is made absolute in Transferred Writ Petition No. 3341 of 1991 (from Nagpur Bench Writ Petition No. 1475 of 1987), Transferred Writ Petition No. 3345 of 1991 (from Nagpur Bench Writ Petition No. 1672 of 1987), Transferred Writ Petition No. 3333 of 1991 (from Nagpur Bench Writ Petition No. 1701 of 1987) and Transferred Writ Petition No. 3331 of 1991 (from Nagpur Bench Writ Petition No. 1087 of 1988) and the Employment Notice No. GA/D-3/87 pertaining to the posts of Professors and the roster, upon which it is based, are hereby quashed and set aside.

(d) There shall be no order as to costs.

48. In accordance with clause 36 of the Letters Patent, the petitions may now be placed before the Division Bench of Deshpande and Wahane, JJ. for passing the final orders with regard to these petitions.