

(1998) 09 AHC CK 0173
In the Allahabad High Court
Case No : C.M.W.P. No. 20726 of 1997

Ram Gopal, Chairman, U.P. Higher Education Services
Commission and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 03-09-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 348
Electricity (Supply) Act, 1948 — Section 50, 78A
Uttar Pradesh General Clauses Act, 1904 — Section 16, 18A, 19
Uttar Pradesh Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 — Regulation 5, 5(2), 6
Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 11, 12, 13, 14, 19
Uttar Pradesh Higher Education Services Commission Rules, 1981 — Rule 5
Uttar Pradesh Intermediate Education Act, 1921 — Section 4
Uttar Pradesh Municipalities Act, 1916 — Section 30
Uttar Pradesh State Control Over Public Corporations Act, 1975 — Section 2, 2(2)
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 41(1)

Citation : (1998) 4 AWC 537 : (1999) 2 UPLBEC 825

Hon'ble Judges : S.H.A. Raza, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Dinesh Dwivedi and Prem Prakash, for the Appellant;

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—The fate of this writ petition which has been filed by M/s. Ram Gopal Chandra, Daya Ram Singh and Raj Kishore, Singh,

the Chairman and Members of U.P. Higher Education and Services Commission, hinges on the reply to the following questions.

1. Whether a direction restraining the Commission to make selections can be issued by the State Government in exercise of its powers u/s 2 of

U.P. State Control of Public Corporation Act, 1975 (hereinafter referred as

Corporation Act, 1975) and Section 6(3) of U.P. Higher Education

Services Commission Act, 1980, because selection covers the legislative activity.

2. Whether the impugned order of removal passed against the petitioner No. 1 from the post of Chairman and against remaining two who are the

members of the Commission is non est inasmuch as the same is in violation of Section 6 of the U.P. Higher Education Services Commission Act,

1980 (hereinafter referred to as the Commission Act, 1980) and Rule 5 of the Rules framed thereunder.

3. Whether the order of removal passed against the petitioners is discriminatory inasmuch as one member, who was equally responsible for the

decision of the Commission in the matter of selection of candidates was not removed while the petitioners have been removed.

4. Whether the petitioners were disqualified on account of the amending Ordinance of 1997, which is not retrospective in nature.

2. The factual matrix in short compass as set out in the writ petition is that the U.P. Higher Education Services Commission, Allahabad (hereinafter

called the Commission) was created by virtue of U.P. Act No. 16 of 1980, which came into force on 21.8.1980 which is body corporate for the

appointment of teachers to the colleges affiliated to or recognised by the University and for matter connected therewith or incidental thereto

Sections 11 and 12 vests powers with the Commission with regard to the appointment of teachers including Principals. The said Commission is a

statutory body and was created on the pattern of U.P. Public Service Commission, enjoys autonomy in the matters of selection of teachers and

Principals.

3. Sections 19, 22(1), 22(2), 28, 31, 31(a), 32 and 92 vest powers with the State Government only in matters of financial control and issue

direction in the matter of appointment of employees because under the Act, State has to arrange funds for the effective functioning of the

Commission.

4. The object and reason of the Act indicates that the Commission has been established for selection of teachers for the institutions of higher level.

The Commission enjoys autonomous statutory powers to make selection free from fear and favour or undue influence and pressure. However, the

State Government has been conferred with the powers to take disciplinary action

against the members on the ground specified in Section 6(1) of

the Act, but the Act does not vest any power with the State Government to supersede or repeal the Commission. The object for which the

Commission was created, was to stop the arbitrary appointments of teachers and Principals, which were usually made by the management of such

institutions to stall the process of appointing ad hoc teachers by the management and the educational authorities.

5. The Commission discharges its statutory and legislative obligation only after receiving the due intimation of vacancies from the Directorate of Higher Education.

6. In pursuance of such an intimation, the Commission issued advertisement on 13.12.1996 for making selection on the various posts of Principal.

Similarly, requisition was sent by the Director of Higher Education to the Commission for making selection for the post of Lecturers, and the

Commission issued advertisement for the same on 13.12.1996.

7. The process of selection was expedited for the reason that in one of the writ petition, a Division Bench of this Court directed the Commission to

complete the process of regular selection within four months. The management of the colleges were directed to send the requisition within a week

from the date of receipt of a certified copy of the order. The Court clarified that the direction to expedite the process of selection has been passed

to avoid indiscipline in the institution and remove uncertainty from the minds of the teachers.

8. After issuing the advertisement, the process of the selection was set into motion. Large number of applications were received and after short-

listing of the candidates, who did not come within the field of eligibility, the candidates were invited for interview. The first phase of the selection on

the post of Principals commenced from 2nd April, 1997 and culminated on 5.4.1997. At the time of the interview, besides the members of the

Commission, experts were also present.

9. As soon as the interview commenced on 2.4.1997, the Commission received a letter from the State Government dated 1.4.1997 to stay the

process of the selection in view of the fact that certain legislators and other representatives had expressed a doubt about the impartiality of the

selection process. The Commission was directed that the order should be

complied forthwith, and the Government be intimated in that regard.

10. On 2nd April, 1997, the Commission sent a reply to the State Government that the selection process had commenced and it was not possible

to stop the same in public interest. The Commission also intimated to the State Government that selection was being carried out in pursuance of the

direction of the Allahabad High Court in Writ Petition No. 19557 of 1996, whereby the Court had directed that, the selection in respect of the

vacancies existing in several institutions would be made and the State Government would make an endeavour to co-operate with the Commission

so that the selection process be completed. The letter also indicated that the selection process was started in pursuance of the order of the High

Court and if that would not be completed within the specified period, that would amount to contempt of courts.

11. On 11.4.1997 the State Government in pursuance of the provisions of Clause (3) of Article 348 of the Constitution issued a notification, which

reads as under:

Whereas, the State Government has received complaints regarding irregularities committed by the Uttar Pradesh Higher Education Service

Commission in selection of candidates on the posts of Principal.

Whereas, it is expedient that selection of candidates on the posts of Principal be not made by the said Commission without previous approval of

the State Government.

Now, therefore, in exercise of the powers u/s 2 of the Uttar Pradesh Control Over Public Corporation Act, 1975 (U.P. Act No. 11 of 1975), the

Governor is pleased to direct that with effect from the date of this notification, the said Commission shall, without previous approval of the State

Government in writing, take no step to make selection of candidates, by direct recruitment, for appointment in the substantive vacancies of the

posts of Principal due between 2nd-5th April, 1997 and shall not prepare any panel of candidates.

Provided that this notification shall not apply in respect of selection to the post of Principal of D.V. Post Graduate College, Jalaun at Orai.

12. It seems that the post of Principal of D.V. Post Graduate College, Jalaun at Orai was exempted because the direction of the High Court was

made in the writ petition, which was filed by one Dr. Govind Singh Niranjana,

pertaining to the appointment of Principal in D.V. Post Graduate

College, Jalaun at Orai. Probably, the State Government was of the view that the judgment passed in Writ Petition No. 20651 of 1997 was a

judgment ""in personam"" and not a judgment ""in rem"".

13. It was asserted by the petitioners that the selection process had been completed and the result was declared on 9.4.1997, which was

communicated in the candidates on 11.4.1997. It was urged that the direction issued by the State Government under the said notification dated

11.4.1997 was without jurisdiction inasmuch as the State Government was not vested with the power to issue such a direction u/s 2 of

Corporation Act, 1975. On 23.4.1997 the Commission sent its reply indicating the aforesaid facts as well as informed the State Government that

the provisions of Corporation Act, 1975 have no application in respect of discharge of obligation, duty and function of the Commission as

provided under Chapter III of the Commission Act.

14. The Commission also issued letters to the candidates for interview, which were scheduled to be held from 23.6.1997 to 28.6.1997 (for

chemistry) and 4.7.1997 to 10.7.1997 (for botany). Candidates were duly intimated that the expert panel had been prepared and finalised and the

experts were requested to be present at the time of interview for selecting the candidates.

15. On 5.6.1997 the State Government, taking a cue from Section 2 of the Corporation Act, 1975, instituted an enquiry and appointed the

Commissioner, Allahabad Division, Allahabad, as an Enquiry Officer in respect of complaints of irregularities alleged to have been committed by

the Commission in respect of selection.

16. It has been submitted that there existed no provision under the U.P. Higher Education Services Commission Act for holding an enquiry by the

State Government in the matters of selection of candidates by the Commission inasmuch as the Commission is a creation of Statute passed by the

Legislatures and was performing its statutory and legislative duties and obligations and the Commission cannot be subjected to such an enquiry. On

11.6.1997 the Commission protested against the alleged unwarranted action by the State Government by stating that the aforesaid enquiry had

been instituted with mala fide intention and with the objective of pressurising

and arm twisting the Commission and to obtain certain desired results.

17. In its explanation the Commission refuted the charges alleged in the order dated 2.6.1997. It was urged that the State Government could not

have passed an order against the Commission or restraining the Commission from stalling its statutory duty and obligation on the basis of frivolous

complaints which have not been substantiated. It was further urged that the male fide on the part of the State Government was writ at large

inasmuch as there was whimsical move by the State Government to perpetuate the ad hoc appointments in the institutions solely with the view to

appease the managements of the institutions and their favourite candidates.

18. It was also urged that against the selection of the Principals made by the Commission, certain writ petitions were filed, which were pending

before the Allahabad High Court and the matters were sub-judice. It was averred that the State Government with a pre-determined move had

initiated the process of stalling the selection by causing inconvenience and harassment, thereby hampering the process of selection and the

functioning of the Commission.

19. It is stated that in spite of the explanation submitted by the Commission, the State Government repeated the same exercise by issuing an

identical notification on 20.6.1997 asking the Commission not to discharge its statutory function in holding the selection.

20. As soon as the Commission received the notification dated 29.6.1997, the Commission held a meeting on 21.6.1997 and intimated to the

State Government its inability to comply with the direction on account of the fact that (he said notification was issued at a belated stage, and it was

not in public interest to stall the process of selection. The Commission also urged that it was beyond the powers of the State Government to issue

such an order, which amounts to an interference into the autonomy of the Commission in holding the selection.

21. As soon as the resolution of the Commission was received, the State Government issued a notice dated 23.6.1997, on the date, when the

interview for selection of Lecturers had commenced. By means of the said notice, the members of the Commission were required to show cause

within 24 hours as to why action u/s 6 of the Act be not taken for breach of the order dated 20.6.1997. The letter indicated that the resolution of

the Commission dated 21.6.1997 proved the charges of insubordination and non-compliance of the order of the Government.

22. On 24.6.1997 the Commission requested the State Government to grant a short period of ten days to enable it to submit a detailed reply

against the said notice. As, according to the Commission, it was impossible for the Commission to reply to the State Government within less than

24 hours, because the notice dated 23.6.1997 was received by the Chairman and members of the Commission at 1 a.m. on 24.6.1997. On

27.6.1997 the State Government passed the order of removal of the petitioners.

23. It was urged that the aforesaid order was passed without giving any opportunity to the petitioners to submit their explanation as desired in the

notice dated 23.6.1997. Although the Commission could not submit any reply to the notice dated 23.6.1997 and only requested for the extension

of the time to the petitioner, in response to the notice dated 23.6.1997, the State Government treated it to be a reply to the show cause notice and

the order of removal was passed, which according to the petitioners is improper, unfair, unjust and arbitrary.

24. In the counter-affidavit it has been averred that the Commission has advertised the post for making selection of Principals to the Post Graduate

and Degree Colleges by inviting the applications through advertisement Nos. 21, 22 and 23. The vacancies advertised under the advertisement

No. 22 were related to reserved quota belonging to Scheduled Caste and Scheduled Tribes candidates. The result of advertisement No. 21 was

declared on 17.8.1996. A detailed chart, for number of applicants and those called in different categories along with selected candidates in regard

to vacancies in advertisement No. 21 is prepared. Category 1 is the best category, thereafter standards go down till category No. II. Category

No. II is of those who do not possess minimum qualification. Advertisement No. 21 was for 20 posts of Principals of Post Graduate Colleges. Out

of these 6 posts were reserved for Other Backward Classes candidates, 4 posts were reserved for Scheduled Caste and Schedule Tribes

candidates. The remaining 10 posts were for the general candidates. The general candidates were called for interview having requisite qualification

prescribed under the category Nos. 1, 2 and 3 (a), whereas the O.B.C. candidates were called for interview having requisite qualification till

category No. 10.

25. It was further averred that the candidates falling under the O.B.C. category, who were called for interview under category Nos. 3(b) to 10

have been selected for being appointed as Principal against the general vacancies. Whereas the general candidates in those categories were not

called. The candidates falling in category Nos. 3(b) to 10 did not fulfil the screening test as general candidates and could neither be called as

general candidates nor could be appointed. They could at the most be considered for O.B.C. reserved posts.

26. According to the Regulations the number of persons, who can be called for interview have to be 3 to 8 times of the vacancies. There was 10

vacancies in general category and 6 vacancies in O.B.C. category. Against these vacancies at the most 80 persons in general category and 48 in

O.B.C. category could be called for interview, but the petitioners called 108 in general category and 63 in O.B.C. category. The O.B.C. falling in

category Nos. 9 and 10 could neither be called for interview nor any selection could be made. Similarly in general category also no person in

category 3A and part of category 2 could be called for interview. No such person could be selected. The Commission had not taken into

consideration the academic qualification or experience. No mark was awarded on the academic performance or the experience of the candidates

and the sole ground of selection was the marks awarded in the interview.

27. It was alleged that as far as advertisement Nos. 22 and 23 are concerned, there were 20 vacancies. Out of these, 9 were for general

candidates, 5 for O.B.C. and 6 for S.C. and S.T. In the general category only 7 results were declared, out of this 2 was for O.B.C., who were

selected in general category. There were only 9 posts for general category in the advertisement, as such 72 persons could be called for the

interview, yet 88 persons were called. All persons in category II for general could neither be called nor could be selected. Amongst O.B.C.

candidates falling in category 10 could neither be called for general category nor could be appointed as general candidates. Most of the O.B.C.

candidates have been selected from category Nos. 9 and 10, which is the lowest category.

28. It was averred that writ petitions were filed before the High Court, Allahabad

in which the selection in pursuance of the advertisement Nos. 21 to 23 have been challenged. In some of the writ petitions interim orders have been issued staying the selection. In a public interest litigation hearing Civil Misc. Writ Petition No. 29670 of 1996, the selection was challenged, but no interim order was passed. It was averred that the State Government was receiving complaints that selections were made on extraneous consideration. The Commission was losing its credibility and the selection was dubbed as force. In view of the aforesaid reasons, the State Government took a policy decision that selection be made by the Commission and issued the requisite direction on 1.4.1997, 11.4.1997, 2.6.1997 and 20.6.1997. The Commission instead of obeying the direction, preferred to defy the directions and completed the process of selection. According to the respondents, the direction can be issued not only u/s 2 of the Corporation Act, 1975, but also u/s 6(3) of the Commission Act, which empowers the State Government to suspend from office any member in respect of whom any action is contemplated in this section.

29. According to the respondents, as the State Government has been vested with powers to suspend from office any member, it includes the power to restrain the Commission from functioning. It was further averred that ample and repeated opportunities were given to the petitioners, but as they refused to comply with the direction, their services were terminated. As the State Government had no option, it gave the petitioners a formal notice dated 23.6.1997 to show cause, although it was not necessary. As the third member, Mr. Akhtar Majid, did not participate into the meeting for passing the resolution, his services were not terminated.

30. It was stated that the order of the removal of the petitioners was passed u/s 2 of the Corporation Act, 1975 read with Section 18A of the U.P. General Clauses Act and Section 6(1) of the Act. This was the only way to enforce the binding directions issued u/s 2 of the Corporation Act. Section 6(2) of the Act and Rule 5 of the Rules are not applicable. These provisions apply where misconduct is to be investigated upon. In the present case the misconduct of the petitioners is not to be investigated and for that reason no formal notice was necessary.

31. Reference was placed to the U.P. Higher Education Services Commission (Amendment) Ordinance, 1997, which amended Sub-section (2) of

Section 4 of the Commission Act, whereunder, the qualification or appointment of the Chairman as well as (under Sub-section (2)(a) as member

have been modified. According to the said Ordinance no person shall be qualified for appointment as Chairman unless he is or has been:

(a) a member of the Uttar Pradesh Higher Judicial Service who has held the post of District Judge or any other equivalent thereto; or

(b) a member of the Indian Administrative Service who has held the post of Secretary to the State Government or any other post equivalent under

the State Government equivalent thereto; or

(c) a Vice-Chancellor of any University; or

(d) a Professor in any University.

32. The Ordinance further provide that no person shall be qualified as member unless he is or has been:

(a) a member of the Uttar Pradesh Higher Judicial Service who has held the post of District Judge or any other post equivalent thereto ; or

(b) a member of the Indian Administrative Service who has held the post of Secretary to the State Government or any other post under the State

Government equivalent thereto; or

(c) a Vice-Chancellor of any University; or

(d) a Professor in any University; or

(e) a Principal of a Post Graduate College for a period of not less than ten years; or

(f) a Principal of a Degree College for a period of not less than fifteen years.

33. It was submitted that the petitioners are not possessed of the qualifications laid down in the said ordinance, and they have no right to continue

in the office. Their qualifications are as follows:

(1) Shri Ram Gopal, Petitioner No. 1 is a retired I.A.S. Officer of Punjab Cadre and he had never served as a Secretary, or on any equivalent

post in the State of U.P.

(2) Shri Daya Ram Singh, petitioner No. 2 has held the post of Professor in the Degree College, but he had never been a Principal of any Post

Graduate College for a period of 10 years or a Principal in a Degree College for a period of 15 years as stipulated in the U.P. Ordinance No. 5 of

1997.

(3) Shri Raj Kishore Singh, petitioner No. 3 had served as Principal in the Post Graduate College for a period of three years and four months only

and, therefore, he does not fulfil the requisite requirement of ten years experience as Principal of the Post Graduate College.

34. The said Ordinance No. 3 of 1997 was promulgated on 26.5.1997 and it came into force with immediate effect. It was submitted that any

further continuance of the petitioners as Chairman and members will violate the mandatory provisions of the Ordinance, thereby, they were not

liable to continue any further. As Shri Akhtar Majid requisite qualification under the law also, no action was taken against him.

35. As far as the first question which we have framed at page No. 1 of this judgment is concerned, it would be appropriate to glance over the

provisions of Section 2 of the Corporation Act, 1975, provisions of Section 6(3) of the Commission Act and other provisions of Section 6 of the

Commission Act, which are reproduced below:

2. Power to issue directions to statutory bodies.--(1) Every statutory body (by whatever name called), established or constituted under any Uttar

Pradesh Act, excepting Universities governed by the Uttar Pradesh State Universities Act, 1973 as re-enacted and amended by the Uttar Pradesh

Universities (Re-enactment and Amendment) Act, 1974 shall in the discharge of its functions, be guided by such directions on question of policies,

as may be given to it by the State Government, notwithstanding that no such power has expressly been conferred on the State Government under

under the law establishing or constituting such statutory body.

(2) If any question arises whether any matter is or is not a matter as respects which the State Government may issue a direction under Sub-section

(1), the decision of the State Government shall be final.

36. Section 6 of the Commission Act, 1980 reads as under:

6. Powers of the State Government to remove the member.--(1) The State Government may, by order, remove from office any member, if he-

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is in the opinion of the State Government unfit to continue in office by reason of infirmity of mind or body or of proved misconduct.

(2) The procedure for the investigation and proof of misconduct under this section shall be such as may be prescribed.

(3) The State Government may suspend from office any member in respect of whom any action is contemplated under this section.

37. It was vehemently argued by Shri Yatindra Singh, learned Additional Advocate General that the State Government has constituted the

Commission. It appoints the members u/s 4 of the Act. It can remove the member u/s 6(1) of the Act. It can also suspend any member u/s 6(3) of

the Act. The direction of the State Government amounts to suspension in part and such a direction can be issued under Sub-section (3) of the Act.

It was urged that even if there was no specific power of suspension, the appointing authority namely, the State Government can always restrain the

member from functioning in the public interest as has been done in (he present case.

38. It was submitted that in the instant case the members were not allowed to function, but were entitled to all other benefits including the pay etc.

A suspended person has no benefit except for getting subsistence allowance. Power to issue such direction is implied. In this regard learned

Additional Advocate General relied upon the following decisions of the Supreme Court:

1. B.R. Patel v. State of Maharashtra 1968 SC 800 .
2. P.R. Nayak Vs. Union of India (UOI), .
3. The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union, .
4. Gurudeva Narayan Srivastava Vs. State of Bihar and Another, .
5. L.C. Agarwal Vs. Municipal Board, Hapur and Others, .
6. Hutche Gowda v. State of Mysore AIR 1963 Mys 66.

39. In B.R. Patel v. State of Maharashtra (supra) under Fundamental Rules 53 and 54 the power of interim suspension and suspension by a

penalty was provided. Enquiry was initiated against the petitioner into the charge of misconduct. The suspension order was passed during the

pendency of the enquiry. The suspension order was held valid by the Supreme Court. As far as the payment during the period of suspension was

concerned, the Hon"ble Supreme Court ruled that it depends upon the provisions in that aspect.

40. In *Hotel Imperial v. Hotel Imperial Workers Union* (supra), the Supreme Court observed:

The power of the employer to suspend an employee under the ordinary law of master and servant in the sense of a right to forbid a servant to

work, is not an implied term in an ordinary contract between master and servant, and such a power can only be the creature either of a statute

governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the

contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does as

he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of

employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and

servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

41. More or less similar observations were made in *P.R. Nayak v. Union of India* (supra); *Gurudeva Narain Srivastava v. State of Bihar* (supra);

L.C. Agarwal v. Municipal Board Hapur (supra) and *Hutche Gowda v. State of Mysore* (supra).

42. Undoubtedly, Section 6(3) vests powers with the State Government to suspend from office any member of the Commission in respect of

whom any action is contemplated under this section, but this section does not vest any power with the State Government to restrain the functioning

of the Commission, which has been vested to it by an enactment. The suspension of a member of the Commission on the charge of misconduct has

nothing to do with the suspension or immobilisation of the Commission.

43. The contention that the power to suspend a member of the Commission includes the power to suspend the functioning of the Commission, is

totally misconceived and the authorities which have been cited in support of the contention have no relevance at all.

44. Before dealing with Section 2 of Corporation Act, 1975, we have to look into the powers and duties of the Commission which the Legislature

has assigned to the Commission. Section 11 of the Commission Act, 1980 deals with the powers and duties of the Commission which is

reproduced as under:

11. Powers and duties.--The Commission shall have the following powers and duties, namely--

(a) to prepare guidelines on matter relating to the method of recruitment of teachers in colleges;

(b) to conduct examinations where considered necessary, hold interviews and make selection of candidates for being appointed as such teachers;

(c) to select and invite experts and to appoint examiners for the purposes specified in Clause (b);

(d) to make recommendation to the management regarding the appointment of selected candidates;

(e) to obtain periodical returns or other informations from colleges regarding strength of the teaching staffs and the appointment, dismissal, removal,

termination or reduction in rank of teachers therein;

(f) to fix the emoluments and travelling and other allowance of the experts and examiners;

(g) to administer the funds placed at the disposal of the Commission;

(h) to perform such other duties and exercise such other powers as may be prescribed or as may be incidental or conducive to the discharge of

the above functions.

45. Section 12 of the Commission Act, 1980 deals with the procedure of the appointment of teachers, which is reproduced below:

12. Procedure for appointment of teachers.--(1) Every appointment as a teacher of any, college shall be made by the management in accordance

with the provisions of this Act and every appointment made in contravention thereof shall be void.

(2) The management shall intimate the existing vacancies and the vacancies, likely to be caused during the course of the ensuring academic year, to

the Director at such time and in such manner, as may be prescribed.

Explanation.--The expression ""academic year"" means the period of 12 months commencing on July 1.

(3) The Director shall notify to the Commission at such time and in such manner as may be prescribed a subjectwise consolidated list of vacancies

intimated to him from all colleges.

(4) The manner of selection of persons for appointment to the posts of teachers of a college shall be such, as may be determined by regulations:

Provided that the Commissioner shall with a view to inviting talented persons give wide publicity in the State to the vacancies notified to it under

Sub-section (3):

Provided further that the candidates shall be required to indicate their order of preference for the various, colleges vacancies wherein have been advertised.

46. Section 13 deals with the recommendation of the Commission, which is reproduced below:

13. Recommendation of Commission.--(1) The Commission shall, as soon as possible, after the notification of vacancies to it under Sub-section

(3) of Section 12, hold interview (with or without written examination) of the candidates and sent to the Director a list recommending such number

of names of candidates found most suitable in each subject as may be, so far practicable, twenty five per cent more than the number of vacancies

in that subject. Such names shall be arranged in order of merit shows in the interview, or in the examination and interview if an examination is held.

(2) The list sent by the Commission shall be valid till the receipt of a new list from the Commission.

(3) The Director shall having due regard in the prescribed manner, to the order of preference if any indicated by the candidates under the second

proviso to Sub-section (4) of Section 12, intimate to the management name of a candidate from the list referred to in Sub-section (1) for being

appointed in the vacancy intimated under Sub-section (2) of Section 12.

(4) Where a vacancy occurs due to death, resignation, or otherwise during the period of validity of the list referred to in Sub-section (2) and such

vacancy has not been notified to the Commission under Sub-section (3) of Section 12, the Director may intimate to the management the name of a

candidate from such list for appointment in such vacancy.

(5) Notwithstanding anything in the preceding provisions, where to abolition of any post of teacher in any college, services of the person

substantively appointed to such post is terminated the State Government may make suitable order for his appointment in a suitable vacancy,

whether notified under Sub-section (3) of Section 12 or not in any other college,

and thereupon the Director shall intimate to the management accordingly.

(6) The Director shall send a copy of the intimation made under Sub-section (3) or Sub-section (4) or Sub-section (5) to the candidate concerned.

47. Section 14 of the Act deals with the duty of management, which is reproduced below:

14. Duty of management.--(1) The management shall within a period of one month from the date of receipt of intimation under Sub-section (3) or

Sub-section (4) or Sub-section (5) of Section 13, issue appointment letter to the person whose name has been intimated.

(2) Where the person referred to in Sub-section (1) fails to join the post within the time allowed in the appointment letter or within such extended

time as the management may allow in this behalf, or where such person is otherwise not available for appointment, the Director, shall on the request

of the management intimate fresh name from the list sent by the Commission under Sub-section (1) of Section 13 in the manner prescribed.

48. A perusal of Sections 11 to 14 of the Act indicate (hat it empowers the Commission to select the most suitable candidate for appointment on

the intimation of vacancies to it u/s 12 and send to the Director a list containing the names of selected candidates, arrange in order of merit. After

the Commission sent the list containing the names of selected candidates, its function is over.

49. The powers and duties of the Commission as contained in Sections 11, 12 and 13 are statutory and while making the selection, the

Commission performs the legislative functions assigned to it.

50. Now, we have to examine, as to whether under Sub-section (2) of Corporation Act, 1975, the State Government has been vested with any

power to stay, suspend or restrain the Commission from performing its statutory/ legislative functions, duties and obligations assigned to it.

51. The Commission is an independent and autonomous statutory body, which has been created under the Statute, like the Public Service

Commission, it is not subservient or subordinate to the directions of the State Government. It plays an important role in the selection and

appointment of teachers. The Commission has to perform functions and duties in an independent and objective manner uninfluenced by the dictates

of any other authority, including the State. The State Government cannot issue any direction to the Commission to stop the process of Selection.

The powers of the State Government is confined to Section 9, which reads as under:

9. Staff of the Commission.--(1) The Secretary of the Commission shall be appointed by the State Government on deputation for a term not

exceeding five years, and other conditions of his service shall be such as the State Government may, from time to time, determine.

(2) Subject to such directions as may be issued by the State Government in this behalf the Commission may appoint such other employees as it

may think necessary for the efficient performance of its functions under this Act, and on such terms and conditions of service as the Commission

thinks fit.

52. Undoubtedly, the Commission being a statutory body is a corporation within the meaning of Corporation Act, 1975 and the State Government

in the discharge of its function can issue direction on question of policy. Section 2 of the Corporation Act, 1975 is analogous to Section 41(1) of

U.P. Urban Planning and Development Act, Sections 8, 10(3) and 12 of the State Universities Act, Section 78A of Electricity Supply Act, 1948,

Section 4 of the Intermediate Education Act and Section 30 of U.P. Municipalities Act.

53. In Rakesh Ranjan Verma and others Vs. State of Biha and others, , the post of Junior Electrical Engineers was included in the panel list of the

year in question, but they could not be appointed there being no sufficient vacancies in that post. The Committee recommended the appointment of

such candidates on the lower post of operators. The State Government taking a cue from Section 78A of the U.P. Electricity Supply Act, issued

direction to the Board to appoint such persons to the post of Junior Electrical Engineer. The Hon''ble Supreme Court ruled that such a direction

was an encroachment on the Board''s power u/s 50. It was further held that the Board cannot be directed to fill in the vacancies from the panel of

the selected candidates, which was prepared.

54. In M/s. Real Food Products Ltd. and others, etc. etc., Vs. Andhra Pradesh State Electricity Board and others, , it was observed by the

Supreme Court:

The only surviving question is with regard to the nature and effect of the direction given by the State Government u/s 78A of the Act. The question has to be examined in the context of the facts of the present case which is confined to the charging of a flat rate per H. P. for agricultural pump sets. The nature of the function of the Board in fixing the tariffs and the manner of its exercise has been considered at length in the earlier decisions of this Court and it does not require any further elaboration in the present case. Section 78A uses the expression "the Board shall be guided by such directions on question of policy as may be given to it by the State Government." It does appear that the view expressed by the State Government on a question of policy is in the nature of a direction to be followed by the Board in the area of the policy to which it relates. In the context of the function of the Board of fixing the tariffs in accordance with Section 49 read with Section 59 and other provisions of the Act, the Board is to be guided by any such direction of the State Government. Where the direction of the State Government, as in the present, case, was to fix a confessional tariff for agricultural pump-sets at a flat rate per H.P., it does relate to a question of policy which the Board must follow. However, in indicating the specific rate in a given case, the action of the State Government may be in excess of the power of giving a direction on the question of policy, which the Board, if its conclusion be different, may not be obliged to be bound by. But where the Board considers even the rate suggested by the State Government and finds it to be acceptable in the discharge of its function of fixing the tariffs, the ultimate decision of the Board would not be vitiated merely because it has accepted the opinion of the State Government even about the specific rate. In such a case the Board accepts the suggested rate because that appears to be appropriate on its own view. If the view expressed by the State Government in its direction exceeds the area of policy, the Board may not be bound by it unless it takes the same view on merits itself.

55. In *Ester Industries Ltd. Vs. U.P. State Electricity Board and Others*, , Hon"ble Supreme Court ruled:

Section 78A(1) of the Act postulates that in the discharge of its functions, the Board shall be guided by such directions on questions of policy as

may be given to it by the State Government. In other words, the Electricity Board has a statutory function to discharge in determination of the rates

of tariff and terms and conditions subject to which the electrical energy be supplied to the consumers and enforcement thereof. This being a

legislative policy, while exercising the power u/s 78A policy directions issued by the Government may also be taken into consideration by the

Electricity Board which has a statutory duty to perform. But so long as the policy direction issued by the Government is consistent with the

provisions of the Act and the tariff policy laid down by the Board, it may be open to the Board to either accept it or may not accept the directions

as such. It is for the State Government to consider whether the Board has laid down the policy or whether the direction issued by the State

Government has not been properly implemented. The Court cannot give a direction to implement the direction issued by the State Government

exercising the power under Article 226 of the Constitution to direct the Board to exercise its power u/s 78A(1) of the Act. Sub-section (2) has no

application for the reason that if the Board feels any doubt as to whether the direction issued by the Government is in the realm of a policy or

otherwise, then it shall be referred to the authority constituted under the Act whose decision shall be final, i.e., de hors the question in this case.

56. In *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, , the Government of U.P. has issued

directions to the U.P. State Electricity Board to grant rebate in tariff to industrialists as a measure of incentive to set up industries to enable the new

infant industries to get attracted to the areas where the Board was to supply electricity energy so that these prospective consumers of electricity to

be supplied by the Board could establish their industries in the areas so it could withstand the competition with old industrial units as the concession

in the payment of electricity charges would obviously reduce the cost structure, and consequently the price of their manufactured articles, so that

these new industries during the infancy could effectively stand in the competition with old industries, which may be well-settled in the market. In

view of the aforesaid directions the U.P. State Electricity Board issued three notifications, wherein a representation was made by the Board to

guarantee 10% rebate on electricity consumption bill. The aforesaid notification remained in force for more than three years. Thereafter, U.P.

Electricity Board withdrew that incentive package. In the light of the aforesaid facts and circumstances, Hon"ble Supreme Court held:

For the purpose of present discussion we may proceed on the basis that while fixing general tariffs and making them subject to the schemes of

rebate, the Board exercises delegated legislative function flowing from the statute. However, once incentive rebate is granted in the general rate of

tariffs on directions by State u/s 78A, the said incentive rebate offered by the Board would remain in the realm of exercise of statutory power-

cum-duty. In the exercise of the same power the Board in its discretion can grant rebate in appropriate cases within the four corners of Sections 49

and 78A of the Act. Of course this exercise will be subject to legally permissible limits and subject to the said concessional rates being found

reasonable on the touchstone of Article 14 of the Constitution of India.

In paragraph 39 of the report it was observed that it is obvious that if the Board had not promulgated such a policy, the Court could not have

compelled the Board to give such concession. Here the question is having itself promulgated such a policy whether the Board can go back upon it

prematurely.

Thereafter, the Supreme Court held that the respondent-Board must be treated to be stopped from prematurely withdrawing the incentive,

development rebate made available to these appellants-industries by issuing the impugned notification.

Hon''ble Supreme Court thereafter ruled:

If the State or a statutory authority or an executive authority of the State or its limb like the State Electricity Board covered by Article 12

functioning on behalf of the State in exercise of its legally permissible powers has held out any promise to a party, who relying on the same has

changed its position not necessarily to its detriment, and if this promise does not offend any provision of law or does not fetter any legislative or

quasi legislative power inhering in the promisor, or is not otherwise opposed to public policy, then on the principle of promissory estoppel the

promiser can be pinned down to the promise offered by it by way of representation containing such promise for the benefit of the promisee.

In paragraph 41 of the report it was observed:

Before parting with this discussion it must be stated that in the light of the observations made in Ester Industries Ltd. by this Court to the effect that

the fixation of tariff including incentive rebate is a legislative function, the

observations of the High Court that it is not a legislative or delegated legislative function, cannot be sustained. It must be held that such a function is quasi legislative in character reflecting an exercise of delegated legislative power.

57. We have confined this discussion to the provisions of Section 78A of the Electricity Supply Act and have not adverted to refer to analogous of other Acts for the reason that it would unnecessarily drag the discussion. There appears to be no necessity for this Court to multiply the precedent of the High Courts as well as Supreme Court on this question. Suffice to say that when any statute delegates to a particular authority certain statutory powers, such a power assumes a legislative or delegated legislative functions, which are quasi-legislative in nature, which such an authority is entitled to perform such powers in accordance with the legislative policy contained in such a statute, and it cannot be compelled to desist from performing such a legislative policy.

58. In the light of the aforesaid discussion, we have to examine the direction of the State which it had issued u/s 2 of Corporation Act, 1975. By means of the directions dated 1.4.1997 contained in Annexure-10, the State Government directed the Commission to stay the process of selection for the posts of Principal in Post Graduate Colleges.

59. The Commission was justified in refusing to abide by that direction as that direction was not within the four corners and legal permissible limit of Sections 11 to 14 of the Commission Act and on the touchstone of Article 14 of the Constitution was not found reasonable.

60. The direction contained in notification of the State Government dated 11.4.1997 issued u/s 2 of the Corporation Act, 1975, not to take any step for the selection of the Principals without prior approval of the State Government in respect of the selection schedule to be held between 2nd to 5th April, 1997 with a direction not to prepare any panel of candidates "leaving aside Principal of D.V. Post Graduate College, Jalaun at Orai, which was a legislative or delegated legislative function of the Commission, was not honoured by the Commission.

61. Similarly, the direction contained in the notification dated 20.6.1997 issued by the State Government exercising its powers u/s 2 of the Corporation Act, 1975 directing the Commission not to hold selection to the post

of teachers till 15.7.1997, was not complied with.

62. Undoubtedly, the State Government had been vested with certain powers to issue direction u/s 9(2) of the Commission Act, 1980 regarding

the appointment of its employees. Besides the above the State Government had been vested with certain financial powers as contained in Chapter

IV of the Act. u/s 2 of the Corporation Act, 1975 the State Government is vested with the powers to issue direction in discharge of the functions

of the Commission and the Commission being a statutory body shall be guided by such direction on the question of policies, as may be given to it

by the State Government, but in matters pertaining to legislative or delegated legislative field, the State Government cannot issue such directions,

because such a direction will not be within the fore corners of the legislative policy contained in Sections 11 to 14 of the Commission Act, 1980

and on the touchstone of Article 14 of the Constitution of India, such a direction would be unreasonable, irrational and arbitrary.

63. Hon"ble Supreme Court in Om Prakash Rana v. Swarup Singh Tomar (1986) 3 SCC 18, while considering the various provisions of U.P.

Secondary Education Services Commission Act observed that a survey of the provisions of the Services Commission Act makes it abundantly

clear that the entire matter of selecting teachers for recognised institution is intended to be governed by the Services Commission Act. It was

further observed that control over all appointments is exercised by a single source of power, namely, the Commission under the Services

Commission Act. It was held that the scheme set forth in the Services Commission Act enacts a complete Code in the matter of selection of

teachers and resort is no longer permissible to the provisions of the Education Act and its Regulations for the purpose. The Hon"ble Supreme

Court further indicated that in the selection of teachers, the Commission has been charged with the responsibility of inviting talented persons and

selecting the best from among them. The selection has to be made in the context of the particular need and requirements of the college. It is a

responsibility of grave magnitude, the appointment of the head of institution and therefore most appropriately entrusted to the vision, wisdom and

experience of a high powered body, the Commission.

64. Even the Courts have been reluctant in intervening with selections made by

the U.P. Higher Education Service Commission. In *Gaya Ram Pandey v. U.P. Higher Education Services Commission*, 1986 UPLBEC 1523, a Division Bench of this Court observed that Commission consisted of high academicians. The Court must have regard to their status, experience and method of assessing the merit of the candidates. The Commission had the benefit of experience and assistance of experts too. The decision of such a Commission should not be ordinarily interfered with by the Court in exercise of writ jurisdiction.

65. In view of the aforesaid reasons, we are of the view that the directions issued by the State Government to the Commission to stop the selection or not to make selection, was against the legislative policy contained in Sections 11 to 14 of the Commission Act, 1980. We are also of the view that it was not a case of suspension of a member from office as provided u/s 6(3) of the Commission Act, 1980, in respect of whom any action was contemplated under this section, but by means of the aforesaid notifications, the entire Commission was desisted from performing its legislative policy.

66. We are not inclined to accept the argument of the learned Additional Advocate General that if there was no specific power to suspend, the appointing authority, namely, the Government can always restrain the members of the Commission from functioning in the public interest. The Commission being an independent autonomous body clothed with a power to make selection is not barred to follow the directions given by the State Government. The State Government has not been vested with any power under the provisions of the Act to desist the Commission from performing its functions which pertains to legislative policy.

67. Now we have to examine point No. 2 framed by us at page No. 1 of this judgment.

68. No doubt the appointing authority has the power to remove a person to whom it has appointed, but such a power can be exercised following the procedure established by law only. Section 6(2) of the Commission Act, 1980, vests such a power with the State Government to remove a member of the Commission, if he adjudged an insolvent, or engages during his term of office in any paid employment outside the duty of his office, or is in the opinion of the State Government unfit to continue in the office by

reason of infirmity of mind or body or of proved misconduct. The explanation to Section 6 provides that the procedure for the investigation and proof of misconduct under this section shall be such as may be prescribed.

69. Rules were framed u/s 32 of the Commission Act, 1980, by the Governor vide Notification No. 2866-XV, 8115 (85)-79, dated June 10, 1981, (which is hereinafter called the Commission Rules, 1981). Rule 5 of the Commission Rules, 1981, reads as under:

5. Investigation of misconduct [Section 6(2)].--The procedure for the investigation and proof of misconduct referred to in Section 6 of the Act shall be as follows:

(a) where on complaint or otherwise the State Government is satisfied, whether after making a preliminary enquiry or otherwise, that there is a

prima facie case of misconduct it shall give the member concerned an option either to resign the office unconditionally or to face investigation;

(b) if no unconditional resignation is received within 15 days from giving such option, the State Government may appoint an inquiry officer who

shall be a sitting or retired Judge of the High Court or a person eligible to be appointed as a Judge of a High Court;

(c) the inquiry officer shall, after giving the member concerned reasonable opportunity of being heard and after taking such evidence as he may

consider necessary, submit his findings to the State Government within 15 days of the completion of the enquiry;

(d) in conducting such inquiry the inquiry officer shall be guided by rules of inquiry and the principles of natural justice and shall not be bound by

former rules relating to procedure and evidence;

(e) the provision of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976

(U.P. Act No. 4 of 1976) applies to such inquiry;

(f) where during the course of the inquiry, the inquiry officer is changed for any reason whatsoever, it shall not be necessary for the new inquiry

officer to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place;

(g) subject to the provisions contained in these rules, the inquiry officer shall have power to regulate the procedure of the inquiry including the fixing

of place and time of its sitting and deciding whether the inquiry should be conducted in public or in camera.

70. A perusal of the aforesaid rules would indicate that if a member has committed an act of misconduct, elaborate procedures of investigation

have been provided. Before initiating any such inquiry, it is incumbent upon the State Government, if a prima facie case of misconduct existed

against a member, to have informed such a member by giving him an option either to resign the office unconditionally or to face investigation, but if

the member refuses to exercise that option within 15 days, only then the inquiry may be ordered against a person, which would be conducted by a

sitting or retired Judge of the High Court or a person eligible to be appointed as a Judge of the High Court.

71. When the learned Additional Advocate General was confronted with the provisions contained in Section 6(2) of the Commission Act and Rule

5 framed thereunder, he conceded that neither any option, to the member was given to resign nor the State Government has taken recourse to Rule

5, before removing the member, but he adopted a novel argument by stating that provisions of Section 6(2) and Rule 5 will apply to a case where

a misconduct is to be investigated upon. It has no application in the present case. As the disobedience of the direction issued by the State

Government has been admitted by the petitioners, that did not require any proof and nothing was to be investigated upon. He vehemently argued

that the directions issued by the State Government were binding upon the petitioners, which they have not followed. The State Government can

enforce those directions by removing the members because such power is ancillary and inherent with the State Government u/s 2 of the

Corporation Act read with Sections 16 and 19(a) of the U.P. General Clauses Act. Thus, the edifice upon which the entire allegations of

misconduct alleged to have been committed by the petitioners upon which the counter-affidavit was structured, has fallen down.

72. It has been contended by the petitioners that once the Director, Higher Education notified the vacancies and requisition was sent to the

Commission, it is the mandatory delegated legislative function of the Commission to make selection according to the procedure prescribed in the

Act, Rules and Regulation. The procedure for selection has been provided under U.P. Higher Education Service Commission (Procedure for

Selection of Teachers) Regulation, 1983, (hereinafter called the Regulation). Under Regulation 6, the Commission is entitled to short list the applicants on the basis of the academic record, teaching and administrative experience. The experience part is divided into two categories, namely, of a Lecturer and that of Principal. The experience part was further divided into three categories, namely, those Lecturer having 15 years or more experience or possess 10-14 years of experience and lastly those possessing 7-9 years of experience. So far as the question of academic qualification is concerned, it may be a variable qualification for different candidates possessing different marks, but so far as the Ph. D. is concerned, it is a singular qualification with no variance which has been possessed by anyone in this regard. No mark was allocated for Ph. D. degree for the reason that the Statute framed under the Universities Act, there is a provision for relaxation of the academic qualification as well as Ph. D. This criteria of screening has been framed keeping in mind the requirement of Regulation 6. Category No. 11 of unqualified candidates consists of those who do not have minimum qualification of 55% marks in Post Graduation, 55% marks in Graduation as well as 2nd Class in Intermediate or who do not have 50% marks each in the Intermediate and Graduation. So far as the question of calling O.B.C. candidates for interview having qualification for category 10 is concerned, it is stated that the petitioners are not in a definite position to reply to the same in absence of the record and the matter being old. Process of screening and selection, which was adopted by the Commission was followed from very beginning. Interviews were held by the Commission for which purpose the Selection Committees were constituted. One such Committee was headed by the Chairman and the other one was headed by the senior most member of the Commission. The Selection Committee comprises of two members of the Commission and three experts as per Regulation 5(2) of the Regulations, 1983. Care was taken not to disclose whether the candidate is of a General category or O.B.C. category or S.C./S.T. category, because the candidates were subjected to combined interview. The marks were allocated by all the members of the Committee individually and separately and thereafter the selection concludes. As per the marks allocated by the five members of the Committee including three experts separately, the final merit list is prepared of selected candidates. One list

consists of women candidates and the other list consists of male candidates. The names are thereafter arranged in order of merit. In the main

selection the weightage of members vis-a-vis the experts is even, i.e., 50-50 and in addition to that at least concurrence of one expert is

mandatory. Thus, there is no scope for the members of the Commission to manipulate the selection in any manner whatsoever. Since there were

five members of the Committee allocating marks separately, it would not be possible for any member of the Commission, while acting as Member

of the Selection Committee to influence the result until and unless the expert concurs.

73. In nutshell, it was asserted by the petitioners that they had followed the procedure for selection as provided in the Regulations, 1983.

74. The learned Additional Advocate General has submitted that several writ petitions were filed against the selection made by the Commission,

which has given weightage to the Other Backward Classes in the matter of selection. Several instances were cited during the course of the argument.

75. The Commission has taken a possible view while selecting the candidates, there may be an other view, which has been placed before us by the

learned Additional Advocate General, but at this outset it cannot be said that the petitioners have committed any act of misconduct in making the

said selection. Assuming that they have committed any act of misconduct, they could have been well proceeded u/s 6(2) of the Commission Act

read with Rule 5 framed thereunder. It was not the case of the respondent-State that the aforesaid procedure was adopted. A novel argument had

been advanced that u/s 2 of the Corporation Act read with Sections 16 and 19 of the U.P. General Clauses Act, the impugned order of removal

was passed.

76. When a specific provision is provided under the Act and the Rules framed thereunder for the removal of a member, that procedure ought to

have been followed, but that was not done. The petitioners were not given an option to resign as provided under Rule 5 and no enquiry as

provided under Rule 5 was ever conducted against the petitioners.

77. On 21.6.1997 the Commission resolved that it was not possible to comply with the direction issued by the State Government dated

20.6.1997. On 23.6.1997 a notice was issued to the Chairman and all members of the Commission to show cause, by 24.6.1997 till 5 p.m., as to

why on the ground of misconduct action be not taken against them. Notice further indicated that if no reply would be received by that time, then it

would be presumed that the Chairman and Members of the Commission had nothing to say.

78. It is pertinent to mention here that the said show cause notice was issued u/s 6 of the Commission Act, 1980, the said notice was served upon

the petitioners at 1 p.m. through the District Administration on 24.6.1997 at Allahabad. The distance between Allahabad to Lucknow is about 200

K.M. Thus, only 4 hours was left at the disposal of the members and Chairman to have submitted their explanation to the State Government. How

within such short time they could have submitted their explanation before the State Government at Lucknow. They requested to the Secretary to

the Government of U.P. to grant them 10-15 days time to submit the reply. Period sought for, to submit the explanation/reply cannot be said to be

a long period. Assuming that there was some urgency, that period could have been shortened by the State Government, but the petitioners were

not given an opportunity to show cause within a reasonable period. They were not even informed after they sent the letter that if their reply would

not be submitted within a shorter period the State Government will pass appropriate order in their absence for want of reply.

79. On 27.6.1997 the State Government passed an order removing the petitioners from the respective posts in accordance with the provisions

contained in Section 6(1) of the Commission Act, 1980 on the ground that the petitioners reply was unsatisfactory, the petitioners failed to comply

with the directions of the State Government, which amounted to proved misconduct and the petitioners thus, have become ineligible for continuing

on the respective posts in view of Ordinance No. 5 of 1997.

80. As far as the first ground regarding the explanation of the petitioners being unsatisfactory is concerned it is fallacious, as the petitioners only

sought time to file their explanation. They never submitted any explanation, hence the question that their explanation was unsatisfactory, was

absurd.

81. As far as second ground, regarding refusal to comply with the direction of the

State Government is concerned, we have already discussed that they were not bound to comply With those directions of the State Government, as by those directions the petitioners were desisted from performing delegated legislative functions.

82. As far as the third ground in the impugned order is concerned, regarding the ineligibility of the petitioners for continuing on the respective posts in view of the amended Ordinance No. 5 of 1997, which we have formulated as point No. 4 for consideration at page No. 2 of this judgment, is concerned, the Ordinance came into effect on 26.5.1997. It is well-settled rule of construction of every legislative enactment that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the Statute or in the Rule showing the intention to affect existing rights the Rule must be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed prospectively.

83. The amendment does not contain any express provision giving the amendment retrospective effect nor there is any third, showing the necessary intendment for enforcing amended provisions with retrospective effect.

84. It was not the case of the respondents that at the time of their appointment, they were not eligible to be appointed. By means of the said ordinance, the eligibility qualification of the Chairman and the members of the Commission has been altered. At the most, it can be said that whenever in future the Chairman or the member would be appointed by the State Government, they will have to fulfil the eligibility qualification in accordance with the provisions of the Ordinance, if it has not lapsed.

85. In view of the aforesaid situation, the third ground, which has been mentioned in the impugned order for removing the petitioners from the posts of Chairman and members respectively, falls to the ground.

86. The order of removal recited that the same was passed in exercise of the powers vested with the State Government u/s 6 of the Act, which learned Additional Advocate General himself conceded, was not applicable to the present case.

87. Learned Additional Advocate General tried to persuade this Court to arrive at a conclusion that the State Government, which is the appointing

authority possess inherent and ancillary powers to remove the Chairman and the members of the Commission. The petitioners have not been removed in accordance with the procedure established by law as provided under the Act and the Rules. The petitioners were not given any opportunity, much less reasonable opportunity to show cause against the order of the removal. The order of removal is in flagrant violation of *audi alteram partem* Rule which is embedded in Article 14 itself. Besides the above, if the impugned order is tested on the scale of Article 14, then the only conclusion which a prudent man can draw is that the order suffers from non-application of mind, unreasonableness, unjustness, irrationality and arbitrariness and the same cannot be sustained.

88. As far as the third point which we have formulated at the bottom of page No. 1, which was followed up at page No. 2 of this judgment is

concerned, that the impugned order suffers from arbitrariness inasmuch as one member, who was equally responsible for making selection and

decision of the Commission was not removed, while the petitioners have been removed from the posts of Chairman and Members respectively, is

concerned, the State Government has taken the stand that as the said member namely, Mr. Akhtar Majid never participated in the meeting for

passing the resolution disregarding the direction, he was not removed.

89. We need not delve into that question as we have already observed that the directions issued by the State Government were non est and the

order by means of which the petitioners were removed from the posts of the Chairman and the members of the Commission was also illegal and

void.

90. There is another aspect of the matter which needs consideration. The Commissioner of Allahabad Division was appointed to hold the enquiry

into the alleged act of misconduct committed by the petitioners. The petitioner No. 1, who is heading the Commission is a retired I.A.S. Officer

holding the rank of Principal Secretary. How the Divisional Commissioner who is below to the rank of petitioner No. 1 can hold such an enquiry.

Furthermore, under Regulation 5 of Regulations, 1983 framed under the Commission Act, 1980, such an enquiry can only be conducted by the

sitting or retired Judge of High Court or a person qualified to be appointed as a Judge of the High Court. If it is presumed that the Commissioner

was directed to hold a preliminary enquiry, even then such an enquiry could not be ordered by the State Government under the provisions of the Commission Act, 1980 and the Regulations, 1983 framed thereunder.

91. It has been contended by the petitioners that after being appointed as enquiry officer, the Commissioner of the Allahabad Division did not hold any enquiry and never submitted any report to the State Government and the State Government passed an order in absence of any enquiry report.

92. In view of the aforesaid reasons, it can be said that there existed no material before the State Government to take such an extreme step of removing the petitioners from the posts of the Chairman and members of the Commission.

93. Lastly, it was contended by the Additional Advocate General that the petitioners were not entitled to reinstatement, as it was a case of giving no opportunity, although the petitioners were given an opportunity to show cause. If the Court finds that the opportunity was not adequate, then without commanding the State Government to reinstate them, the Court can direct the State Government to hold an enquiry after giving reasonable opportunity to the petitioners. In this regard he relied upon the following decisions of the Supreme Court:

1. S.L. Kapoor Vs. Jagmohan and Others, .
2. Swadeshi Cotton Mills Vs. Union of India (UOI), .
3. Smt. Maneka Gandhi v. Union of India 1978 SC 597.

94. The facts and circumstances of the cases which were before the Supreme Court are not applicable to the present case.

95. We are of the view that the right of the petitioners to continue as the Chairman and members of the Commission respectively has been adversely affected by passing the order of removal, which is non est, hence the petitioners deserve to be reinstated in the office which they hold prior to passing of such an order, which is void in law. Hence, the contention of the learned Additional Advocate General that the petitioners are not entitled to be reinstated is totally misconceived as we have already observed that the order is non est.

96. When the writ petition was initially filed, interim order was limited only to the extent of restraining the State Government not to make appointments in place of the petitioners. Thereafter, a modification application

was preferred by the State Government slating, infer alia that Mr.

Daya Ram took over the charge as Member of Higher Education Service Commission on 23 September, 1994 for a term of three years or till he

attains the age of 62 years. His term came to an end on 22.9.1997, hence the State Government will be permitted to appoint another member. The

interim order was modified by this Court and the State Government was permitted to appoint a new member in place of Mr. Daya Ram Singh, the

petitioner No. 2. Petitioner No. 1 took over the charge of the office of the Chairman on 15.9.1995. Petitioner No. 3 took over the charge as

member of the Commission on 23.1.1995. Their terms have not yet expired. Hence they are liable to be reinstated.

97. In view of what has been stated hereinabove the writ petition is allowed. A writ in the nature of certiorari quashing the impugned order dated

27.6.1997 is issued. A writ in the nature of mandamus commanding respondent No. 1 to re instate the petitioner Nos. 1 and 3 is issued, provided

they have not been retired, with all consequential benefits. As far as Sri Daya Ram Singh, petitioner No. 2, is concerned, whose term has expired,

shall be entitled for emoluments, allowances and benefits only thereto till the date on which his term came to an end. A writ in the nature of

certiorari quashing the order dated 1.4.1997, notification dated 11.4.1997, the impugned order dated 2.6.1997 and the notification dated

20.6.1997 contained in Annexures-10, 12, 14 and 15 is issued.

98. However, considering the fact that the Petitioners have suffered humiliation, insult and loss of reputation and have unnecessarily been dragged

into litigation due to whimsical stand and action of the State Government, violating all rules and norms, which the State was to follow, we direct the

State Government to pay Rs. 20,000 (twenty thousand) as special costs to each of the petitioners.