

(1994) 09 AHC CK 0048

In the Allahabad High Court

Case No : Writ Petition No. 876 (S/B) of 1994 Connected with W.P. Nos. 783, 489, 878, 877, 506 (S/B) of 1994

Ram Niwas Pandey

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 11-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 31(4)(a), 31(5)

Citation : (1994) 09 AHC CK 0048

Hon'ble Judges : K.C.Bhargava, J and N.B.Asthana, J

Final Decision : Disposed Of

Judgement

K. C. Bhargava, J.—All the aforementioned writ petitions relate to the same controversy involving similar question of facts and law regarding reservation for the post of Professors, hence these writ petitions have been heard together and are being disposed of by a common judgment.

2. The facts, in short, which are relevant for the purposes of disposal of these writ petitions, are that one post of Professor in Political Science, one post of Professor in the department of Sanskrit, one post of Professor in Medieval and Modern History, one post of Professor in the department of Applied Economics fell vacant between June 1989 to September, 1993. For filling up all these posts Lucknow University issued an advertisement No. 5/1993, copy of which is contained in Annexure1, giving the number of posts required in different departments. In pursuance of this advertisement applications were invited from the eligible candidates. Last date for submission of application Forms was 20th October, 1993. Interview letters for these posts were issued sometimes in March 1994 and the interview of the candidates took place between 4.4.94 to 22.4.94 by the Selection Committee. The Selection Committee after interviewing the candidates submitted its report to the ViceChancellor for placing the same before the Executive Council, who had to approve these selections and thereafter appointment letters are issued. But before these proceedings could be placed

before the Executive Council of the University, an Ordinance No. 5/94 was issued on 11.2.94 by the State Government for reservation of the posts in the cadre of Professors, Readers and Lecturers. Thereafter this Ordinance was replaced by Act No. 4 of 1994, which notified on 23.4.94 and was given retrospective effect from 11th December, 1993. This Act is known as U.P. Public Services (Reservation of Scheduled Caste, Scheduled Tribes and other Backward Classes) Act 1994, (here in after called the Act).

3. When this Ordinance was promulgated, the University keeping in view the provisions of the reservation made, issued fresh advertisement in 1995 inviting applications for the post of Professors and Lecturers. Before this advertisement was issued by the University and after promulgation of Ordinance No. 5/94, the present writ petitions were filed.

4. In some of "the writ petitions, by means of interim direction, it was provided that the proceedings of Selection Committee shall be placed by the Vice-Chancellor before the Executive Council, who shall take decision on the report of the Selection Committee, but shall not issue appointment letters. This interim order was not passed in one of the writ petitions, viz. W.P. No. 783 (SB) of 1994. After the issuance of this interim order the Executive Council approved the selection made by the Selection Committee but refrained from issuing any appointment letter in terms of the Court order. As there was no direction to consider the decision of the Selection Committee in W.P. No. 783 (SB) of 1994, therefore, proceedings of Selection Committee was not placed before the Executive Council, which still remains at that stage.

5. In the writ petitions it is alleged that the Selection Committee was duly constituted in accordance with the provisions of U.P. State Universities Act, 1973 and after coming into force Act No. 4 of 1994, the provisions of Ordinance No. 5 of 94 will not have any effect on the constitution of Selection Committee in view of Section 31 of the U.P. State Universities Act. It has been alleged that the panel of Experts is to be drawn by the Chancellor and the nomination of that Expert should be indicated in the panel. The panel was constituted by the Chancellor after coming into force the Act No. 4 of 1994, hence the Chancellor is now bound by his act and he cannot cancel the recommendations made by the Selection Committee. The provisions of Act No. 4 of 94 are not attracted in the present case in view of the judgment in *Indra Sawhney v. Union of India*, 1992 Supp.(3) SCC 217.

6. It is further alleged that the selection process had already started before coming into force of Act No. 4 of 1994, hence fresh advertisement cannot be issued after amending the earlier advertisement. The roster has also been notified by the Governor on 29th March, 1994 under the provisions of Section 3(5) of Act No. 4/94. In the Selection Committee by virtue of the provisions of Sec. 7 of the Act, nomination is to be given from Scheduled Caste, Scheduled Tribes and other Backward Classes, so that the representation of these classes is duly made. Under the powers conferred under Section 7 of the Act the State

Government has delegated powers of nominating the member of those classes to the Chairman of the Selection Committee, (copy of that G.O. is Annexure 5 to the writ petition). Section 31 of the U.P. State Universities Act cannot be amended by the G.O. and the nomination in the Selection Committee is to be done under the provisions of the Act by the Vice-Chancellor. It is further alleged that under Section 15 (1) of the Act, it is provided that the provisions of this Act shall not apply in the case where selection process has been initiated before commencement of the Act. In the Explanation to Section 15 of the Act it is mentioned that the selection process shall be deemed to have been initiated from the date of starting written examination or interview, as the case may be.

7. As mentioned above in Indra Sawhney's case (supra) the Hon'ble Supreme Court has held that there cannot be any reservation in the post like Professor and other technical and the super speciality post, because it affects the efficiency of Administration, which cannot be compromised. The action of the Vice-Chancellor in issuing fresh advertisement is arbitrary and illegal and he had to refer the matter to the Executive Council for consideration of the recommendations sent by the Selection Committee and the appointments should have been made on the basis of the said selection.

8. By means of supplementary affidavit, it is further mentioned by the petitioners that the Government has issued an order dated 6.3.95 clarifying that the reservation would be applicable Only where five or more posts are available, therefore, reservation cannot be made against the posts which were advertised in the year 1994. A copy of this G.O. has been annexed as Annexure SI to the supplementary affidavit. Reservation in single post of Professor cannot be made as has been laid down by the Hon'ble Supreme Court in various cases, it is further alleged that the cadre of professors, Readers and Lecturers are separate and they cannot be clubbed together for the purposes of reservation as indicated in the G.O. dated 19.4.95.

9. Lucknow University has filed a short counter affidavit alleging therein that the posts were advertised vide advertisement No. 5/93 & 7/93 for various posts of Professors, Readers and Lecturers and interviews were held between 4.4.94 to 20.4.94. It is alleged that before the recommendations of the Selection Committee could be placed before the Executive Council (who is the appointing authority) U.P. Act No. 4 of 1994 came into operation. In exercise of powers given under subSection (5) of S. 3 of U.P. Act No. 4/94 the Govt. issued roster on 29.3.94 for providing reservation. The selection process has been explained in Sec. 15(1) of the Act. As already mentioned in the earlier part of the judgment, before the date of meeting of the Selection Committee U.P. Act No. 4/94 came into operation on 23.3.94, therefore, the University requested the Chancellor for guidance and direction in the matter. The Principal Secretary to the Chancellor informed the University to act after taking into consideration the various provisions of U.P. Act No. 4/94.

10. In view of the clarification given by the Chancellor the Executive Council

decided to advertise the posts afresh after noting the order of the Chancellor regarding cancellation of recommendations of the Selection Committee held after 11th Dec. 1993, Therefore, it is clear that the interviews held by the Selection Committee after enforcement of the Act were not in accordance with the Act, hence readvertisement was necessary. Therefore, recommendations of the Selection Committee could not be placed before the Executive Council for approval.

11. It is alleged that Government issued a G.O. No. 780/15109515 (18)/94 dated 6.3.95 clarifying as to how reservation will be applicable in the State Universities and Degree Colleges, in pursuance of U.P. Act No. 4/94. Thereafter another Notification was issued by the Govt. on 19.4.95 in which it has clarified that all the posts of Professors fall in one cadre and as such on the basis of all the posts, provisions of reservation will be applicable. It has further been clarified that the provisions of reservation will not be applicable on the basis of separate subjects/departments, but the same will be applicable on the basis of all the posts of Professors in all the subjects considering the same into one cadre and the cadre of Readers and Lecturers. A copy of that G.O. has been annexed as Annexure CS1. There are three categories of teachers in the University, viz. Professors, Readers and Lecturers as mentioned in the Statute 10.01. of the U.P. State Universities Act.

12. In the counteraffidavit filed by the State it is alleged that as far as reservation is concerned, number of posts in a particular department is immaterial. All the posts of Professors fall in one cadre irrespective of departments, as such on the basis of all the posts in all the departments provisions of reservation will be applicable. In the G.O. it has been clarified that the provisions of reservation will not be applicable on the basis of separate departments/subjects, rather the same will be applicable on the basis of all the posts of Professors in all the subjects considering the same into one cadre and the same arrangements will be applicable in the cadre of Reader and Lecturer. Previously an advertisement was made on 15th September 1993 for filling up 11 posts of Professors, copy of this advertisement has been annexed to the counter affidavit.

13. It is further alleged in the counteraffidavit that the process of selection did not start from the date of submission of applications or the advertisement but it will be deemed to have been initiated under the relevant service rules on the basis of written test or interview only. It has further been alleged that reservation policy does not apply on the posts whose total number is less than four in a particular cadre. Therefore, the appointment of Director and by. Director in Academic Staff College is in accordance with law, but the posts of Professors, Readers and Lecturers from separate cadre and all the posts in all the departments in the University will made a cadre i.e. Professor cadre, Reader cadre and Lecturer cadre. It has further been mentioned that in view of the clarification sought by some of the Universities, G.O. dated 6.3.95 was issued

that the reservation applies only in the posts when there are five posts in a cadre. Another G.O. dated 19.4.95 further clarifies the position that all the posts of Professor fall in one cadre.

14. In the rejoinder affidavit to the counter affidavit filed on behalf of Opp. party. 1, the State of U.P. the petitioner has been appointed in the subject on whole time basis in view of the Statute 10.02 of the Universities Act. The Statute 11.01 and 11.02 deal and provide with the minimum qualifications for the purpose of appointment on various posts including that of the professors separately in different departments. All the posts in the department cannot be clubbed together in one cadre for applying reservation policy. The entire scheme of the Act contemplated a separate and individual department being separate cadres, which cannot be clubbed in one cadre. The G.O. dated 19.4.95 is wholly illegal and without jurisdiction and cannot operate against the provisions of U.P.State Universities Act. The provisions of Section 7 and 15(1) of the Act are not attracted in the case of Lucknow University because there are no service rules relating to the recruitment of Professors of Lucknow University and the appointment of Professors in Lucknow University is made under the provisions of U.P.State Universities Act and the Statute. There is no provision in the Statute that the post of Professors shall be filled up by way of written test only. On the contrary, a person can be selected without any written test or interview and merely on the basis of the record even in his absence. It is for the Selection Committee to adopt a particular procedure as it may think fit. As there is no provision or rule for holding written test or interview, the explanation, mentioned above, is not at all attracted.

15. Writ Petition No. 506 (SB) of 1994 filed by Baba Sahib Dr. Bhimrao Ambedkar Mahasabha against ViceChancellor and the Registrar of the Lucknow University. In other writ petitions an application for impleadment was also moved by National Union of Backward Classes, Scheduled Castes, Scheduled Tribes and Minorities. That application for impleadment has been allowed and a counter affidavit has also been filed on the lines of writ petition No. 506 (SB) of 1994.

16. It is alleged that the previous advertisement of 1993 was issued inviting for 11 posts of Professors and not for one post of Professor. The roster which was issued on 29.3.94 was issued much before holding of selection by the Selection Committee which started from 4.4.94. As that advertisement ought to have been issued for filling up these 11 posts of Professors. The Selection Committee ought to have been constituted complying with the provisions of Section 7 of the Act and as such the constitution of the Selection Committee is illegal and against the provisions of the Act. There was no advertisement for selection of one post of Professor only. The recommendations of the Selection Committee which was constituted against the provisions of law, cannot be acted upon in view of the fact that they are not recommendations in the eye of law. The entire exercise is void and illegal. U.P.Act No. 4/94 is applicable to the present case and the

allegations to the contrary cannot be accepted. It is further mentioned that the explanation to Section 15 of the Act provides that selection process is deemed to have been started where under the relevant service rules recruitment is to be made on the basis of written test or interview only, has started. This Act will not apply where written test and interview have already started. In the case of selection of Professors no written test is prescribed and the interviews were started long after coming into force the Ordinance which was later on replaced by the Act. The roster has been issued in accordance with the provisions of the Constitution and is perfectly valid. Compliance of Section 7 of the Act is not been made because the advertisement was for 11 posts of Professors. The provisions of Sec. 3(5) of the Reservation Act are not in conflict with Section 31(5) of the U.P.State Universities Act. The provisions of U.P.Act No. 4/94 will prevail over other provisions being a Special Act, The Chancellor was with in its power to issue letters explaining the provisions of the reservation Act for compliance by the University. The case of Dr. Chakradhar Paswan is not applicable in this case as there was no provision for reservation.

17. We have heard learned counsel for the petitioners as well as learned counsel for the opp. parties.

18. The points which arises for determination in these writ petitions may be summarised as under:

"(1) Whether there can be reservation against a single post?

(2) Whether all the posts of Professors in various departments can be clubbed together and treated as one cadre for the purposes of U.P. Act No. 494 providing for reservation?

(3) Whether the vacancies which arose before coming into force the amendment, will be covered by the U.P. Act No. 4/94.

(4) Whether the provisions of U.P. Act No. 4/94 does not apply to the case of Universities, to which U.P. State Universities Act applies.

19. Now we take up these points one by one:

The first point to be considered is whether the reservation against single post is permissible. According to the learned counsel for the petitioner there can be no reservation against single post as been held by the Hon"ble Supreme Court in various cases. Learned counsel appearing on behalf of the State Government and the University, argued that if there is only one post then no reservation will be applicable. Learned counsel in Writ Petition No. 506 (SB) of 1994 argued that the reservation will also apply in the case of isolated single post. In this connection reference may be made to certain decisions of the Apex Court, which have concluded the controversy that no reservation is permissible against single isolated post. The first case is Dr. Chakradhar Paswan v. State of Bihar & Others, (1988)2 SCC 214. In this case Bihar Public Service Commission had invited applications for the post of by. Director (Homeopathic) in the Directorate of

Indigenous medicines, Health Department, State of Bihar, from scheduled castes candidates and thereafter State Govt., by order dated 30th May, 1979 posted Dr. Chakradhar Paswan to that post. On 6th May 1978 the State Govt. created separate Directorate of Indigenous medicines, the director being from one of the systems of medicines consisting of Ayurvedic, Unani and Homeopathic. At that time post of two Directors for each of the two remaining systems was also created. In the Directorate of Indigenous medicines, three posts were sanctioned viz. Director of Indigenous medicines, Dy. Director Homeopathic and Dy. Director Unani. It was suggested that according to roster of appointments out of these three posts, first post be treated as unreserved, second be treated as reserved and third as unreserved. It was argued that all the posts could be grouped together from the point of view of reservation. In para 17 the Court held as under"

"No reservation could be made under Article 16(4) so as to create a monopoly. Otherwise it would render the guarantee of equal opportunity contained in Art. 16(1) & 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."

20. Second case on this points is Bhide Girls Education Society v. Education Officer, Zila Parishad Nagpur and others, 1993 Supp(3) SCC 527. In that case also the question arose as to whether or single post of Head Mistress in an educational institution can be filled up by Scheduled Caste candidate. The Court in that case considered the case of Dr Chakradhar Paswan (supra) and held that Dr. Chakradhar Paswan's case concluded the controversy raised in this case. It was further held that there is only one post of Head Mistress in the High School run by the appellant Society and as such there cannot be any reservation on that post.

21. The Next case is Smt. Chetana Dilip Motghare v. Bhide Girls Education Society", Nagpur and others AIR 1994 Supreme Court 1917. That was a judgment in a review petition. The question in that case was also whether reservation is permissible against a single post. The case of Dr. Chakradhar Paswan) (supra) was also discussed and it was held as under:

"Thus, we are clearly of the view that Dr. Chakradhar Paswan's case (supra) holds the field and the decision by the three Judge Bench dated January 17, 1992, does not lay down any law and is not an authority for holding that the principle of reservation has to be applied in case of even one isolated post also."

22. Thus, in view of the law laid down by the Hon"ble Supreme Court it is held that there can be no reservation against single or isolated post.

23. So far as point No. 2 is concerned, it has been mentioned in the earlier part

of the judgment that in the year 1993, 11 posts of professors were advertised and in pursuance thereto applications were invited by the University for which last date for submission of applications was 20.10.1993. Thereafter Ordinance No 5/94 was promulgated by the State Govt. on 11.2.94 for reservation of posts in favour of Scheduled Caste, Scheduled Tribes and other backward classes. This was replaced by U.P. Act No. 4 of 1994, which was notified on 20.3.94. It is known as U.P. Public Services (Scheduled Caste, Scheduled Tribes and other Backward Classes) Act, 1994, The operation of this Act was made retrospective and it came into operation on 11.12.93. After passing of the said Act, the University after seeking clarification from the Chancellor readvertised these posts in the year 1995. By means of a Notification, all the posts of Professors in different departments were clubbed together. Some of the writ petitions which were filed before issuance of this advertisement, were later on amended and this point was also raised and in other writ petitions this point has been raised in the rejoinder affidavit.

24. Learned counsel for the petitioner has argued that there are three classes of teachers in the University under Statute 10.01, namely, Professors, Readers and Lecturers and they have to be appointed in the subjects on full time basis. He has further argued that the posts of Professors are separate in different departments and separate specialised qualifications have been fixed for separate subjects. According to the learned counsel for the petitioner, the appointment has to be made against a particular subject and not in a cadre of Professors. All the posts of Professors in various departments cannot be clubbed together and treated as belonging to one cadre for the purposes of reservation. According to the learned counsel, the U.P. State Universities Act and the Statute contemplate separate and individual cadres and as such the Govt. Notification dated 19.4.95 is wholly illegal and without jurisdiction.

25. On the other hand learned counsel for the University and the State, argued that all the posts of Professors in different departments can be clubbed together in one cadre for the purposes of reservation. The G.O. dated 19.4.95 copy of which is on the record, provides that all the posts of Professors are in one cadre, hence reservation has to be applied. It has specifically been mentioned that reservation is to be applied after taking into consideration the posts of Professors in different subjects or departments. Such procedure shall also be applied in the case of Reader and Lecturer. This question also arose before the Hon'ble Apex Court for consideration in the case of Dr. Suresh Chandra Verma & Other v. The Chancellor, Nagpur University and others (1990) 4 SCC 55. The question which arose for consideration was whether the employment notice ought to have indicated reservation post wise. In that case the University had issued employment notice inviting applications for a total of 77 posts, which include 13 posts of Professors, 29 posts of Readers and 35 posts of Lecturers in different subjects like Economics, Politics, Sociology, Physics, Pharmacy and Geology. The notice mentioned total number of reservation category wise but not subject wise. After interviews etc. were held and appointments were to be made some Social

Workers and Organisations made representation to the Chancellor. In the meantime writ petitions were also filed before the High Court and the Court restrained from making any appointment without getting recommendations from the B.U.T.R. There was conflicting decisions in two Division Bench cases of the same High Court. The Hon"ble Apex Court considering the nature of advertisement, observed that;

"Neither the University nor the candidate knew at that time as to for which of the subjects and in what number the said posts were reserved. The result was that the candidates belonging to the reserved category in particular, who wanted to apply for the reserved posts did not know for which of the posts they could apply and whether they should apply at all for the posts in the subjects in which they were qualified."

"What is further, the selection committees which were appointed to interview the candidates for the respective posts did not also know whether they were interviewing the candidates for reserved posts or not and to assess merits of the candidates from the reserved category as such candidates."

"In the first instance, the contention proceeds on the footing that all those belonging to the reserved category who wanted to apply for all the said posts had done so even without knowing that the concerned posts were reserved. Secondly, it also presumes that all eligible candidates from unreserved category had applied for the posts without knowing whether the posts were reserved or not. The possibility that many eligible candidates belonging to both reserved and unreserved categories might not have taken the risk and chosen to gamble cannot be ruled out. This argument further ignores the fact that the suitability of a candidate from a reserved category to the particular post has to be adjudged by taking into consideration various factors and the desired result cannot be obtained by merely giving uniform weightage marks to the candidates concerned which was the only method followed by the selection committee while selecting the candidates to the reserved category had applied for a particular post in a reserved seat, without the prior knowledge that the post was reserved. It is, therefore, difficult to understand as to how the selection committees proceeded to give weightage to the candidates without knowing whether they had applied for reserved or nonreserved seats. What is more objectionable in the procedure was that its Executive Council proceeded to classify the posts in different subjects between reserved and nonreserved posts after the lists of selected candidates were received from different selection committees."

26. It was further held in para 11:

"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 post wise i.e. subject wise, 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 post wise i.e. subject wise. The mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised. When, therefore, Section 57(4) (a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e. the subject in which the post is vacant and for which the applications are invited from the candidates belonging to the reserved classes. A nonindication of the post in this manner itself defeats the purpose for which the applications are invited from the reserved "category candidates and consequently negates the object of the reservation policy."

27. In para 14 it was held that the Court was in complete agreement that the view taken by the Full Bench that the employment notice dated July 27, 1984 was bad in law since it had failed to notify the reservations of the posts subject wise and had mentioned only the total number of reserved posts without indicating the particular posts so reserved subject wise.

28. This point has also been considered by a Division Bench of this Court sitting at Allahabad in Civil Misc. Writ Petition No. 12592 of 1995 Dr. Dina Nath Shukla v. State of U.P. & Others decided on 3.5.1996. That writ petition was filed after issuance of GO dated 19.4.95 directing reservation in the post of Professors, Readers and Lecturers in the University treating as one unit. The Court after considering the case of Dr. Suresh Chandra Verma (supra) and other provisions of the State Universities Act observed as under:

"When the posts are created subject wise and the appointments of the teachers are also made subject wise and the teachers of one department cannot be treated as teachers of the other department, all the posts of the teachers of the University cannot be clubbed together category wise for applying the reservation. Each department of teaching is a separate unit. Therefore, reservation has to be applied subject wise. This will ensure reservation in all categories of teachers in all subjects departments. If the reservation is not applied subject wise, it will result in violation of Article 16 of the Constitution. If all the Professors working in all the subjects in the University are treated as belonging to one unit, the result would be that in some subjects there will be no reservation while in others there might be hundred percent reservation."

29. Thus, in view of the decision in the case of Dr. Suresh Chandra Verma (supra) and the Division Bench case, mentioned above, it is clear that the reservation has to be applied subject wise and the Professors of all the departments cannot be clubbed together and treated as one cadre for the purposes of applying reservation. Thus, it is held that the advertisement issued in the year 1995 cannot be upheld and is liable to be quashed.

30. Now we come to the third and fourth point, which can be taken up together

conveniently. Learned counsel for the petitioners raised points regarding the fact that the vacancies which arose before coming into force the U.P. Act No. 4 of 94, shall be filled up by the old rules. Learned counsel for the petitioners have argued that vacancies had arisen before commencement of U.P. Act No. 4/94, hence the selection would be governed by the old rules. It has been seen in the earlier part of the judgment that the vacancies had arisen between June 1989 to Sept. 1993. It has also been mentioned above that previously an Ordinance No 5/94 was issued on 11.2.94 providing reservation for Scheduled Castes, Scheduled Tribes and other Backward classes. Later on the Ordinance was replaced by U.P. Act No. 4 of 1994 which was notified on 23.3.94 and was given retrospective effect w.e.f. 11.12.93.

31. Now we have to see that all the posts which fell vacant before 11.12.93 are to be filled in accordance with old rules or the provisions of U.P. Act No. 4/94 will apply. A perusal of provision of U.P. Act No. 4/94 goes to show that it has been passed in order to provide for reservation in public services and posts in favour of persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens and for matters connected therewith or incidental thereto.

32. Section 3 of the Act provides for percentage of reservation to three classes mentioned above for which reservation has been made under this Act. Reliance has been placed on Sec. 7 and 15 of this Act. For the sake of convenience both these sections are reproduced below:

"Sec. 7 : The State Government may, by order, provide for nomination of officers for giving representation to the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens in the Selection Committee to such extent and in such manner as it may consider necessary where such Committee is constituted either under the service rules or otherwise.

Sec. 15 : The provisions of this Act shall not apply to cases in which selection process has been initiated before the commencement of this Act and such cases shall be dealt with in accordance with the provisions, of law and Government orders as they stood before such commencement.

Explanation: For the purposes of this subsection the selection process shall be deemed to have been initiated where, under the relevant service rules, recruitment is to be made on the basis of

(i) written test or interview only, the written test or the interviews, as the case may be, has started, or

(ii) both written test and interview, the written test has started.

2. The provisions of this Act shall not apply to the appointments to be made under the U.P. Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974".

33. In order to substantiate these points, learned counsel for the petitioners, have placed reliance on certain cases that the selection process starts on the issue of advertisement. The first case is A.P. Public Service Commission, Hyderabad & Others v. B. Sarat Chandra & Others, (1990)2 SCC 669. In this case it was held by the Hon^{ble} Supreme Court that the word "selection" does not mean only the final act of selecting candidates with preparation of the list for appointment. The process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. In the case of N. T. Devin Katt and others v. Karnatak Public Service Commission & others (1990)3 SCC 157, it was held that where advertisement is issued inviting applications for direct recruitment to a category of posts and the advertisement expressly states that selection shall be made in accordance with the existing rules of government orders and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and government orders and any amendment of the rules or the government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended Rules or the amended Govt. orders, issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections. Reliance has also been placed by the learned counsel for University on the above said case of N. T. Devin Katti (supra).

34. Thus, a perusal of these cases go to show that if advertisement has been issued for selecting candidates then the selection process will start from issuance of advertisement but where the advertisement expressly states that the selection shall be governed in accordance with the existing rules or in accordance with the amended rules, then the condition mentioned in the advertisement shall prevail irrespective of the fact whether the vacancy arose before the Rules came into force. But if the rules or provisions are silent on the point then normal course is that the selection process shall be governed by the rules existing on the date of advertisement.

35. Now we have to see in relation to the provisions of U.P. Act No. 4/94 whether the selection process will be governed by the provisions of this Act or in accordance with the rules obtaining before coming into force of this Act. U.P. Act No. 4/94 does not say that the advertisement, which had been issued prior to coming into force of this Act, shall be governed by the provisions of this Act.

36. Section 7, as seen above, provides that where the selection committee is to be constituted either under service rules or otherwise then the State Government may provide for nomination of officers belonging representation to Scheduled Castes, Scheduled Tribes and other Backward Classes. A power has been given to the State Government to notify for nomination of these officers under this

Section. The. State Government had issued a Notification dated 29.3.94 providing for representation of these members in the committee.

37. According to the learned counsel for the petitioners, Sec. 7 clearly provides that if the selection committee is to be constituted in accordance with the service rules only then this provision will apply. The selection committee has been constituted under the U.P. State Universities Act. Reliance has been placed on Section 31(4) (a) of the U.P. State Universities Act to show that the constitution of selection committee has been provided under the Act. This section for the sake of convenience may be reproduced as under: ,

"31(4)(a) : The Selection Committee for the appointment of a teacher of the University (other than the Director of an Institute and the Principal of a constituent college), shall consist of

(i) the ViceChancellor who shall be the chairman there of,

(ii) the Head of the Department concerned:

Provided that the Head of the Department shall not sit in the Selection Committee, when he is himself candidate for appointment or when the post concerned is of a higher rank than his substantive post and in that event his office shall be filled by the Professor in the Department and if there is no Professor by the Dean of the Faculty:

Provided further that where the Chancellor is satisfied that in the special circumstances of the case, a selection committee cannot be constituted in accordance with the preceding proviso, he may direct the constitution of the selection committee in such manner as he thinks fit.

(ii) in the case of a Professor or Reader, three Expertsand in any other case, two experts be nominated by the Chancellor."

38. Thus a perusal of this rule goes to show that the constitution of the selection committee has been provided under the Act where the ViceChancellor is to head the committee as chairman. The provision of expert has also been made and the Chancellor has to nominate the experts. The provision regarding experts is contained in Section 31(5) (a), which is also reproduced for the sake of convenience as below:

"31(5)(a): A panel of six or more experts in each subject of study shall be drawn up by the Chancellor after consulting the corresponding Faculty in Indian Universities or such academic bodies or research institution in or outside Uttar Pradesh as the Chancellor may consider necessary. Every expert to be nominated by the Chancellor under subsection (4) shall be a person whose name is borne on such panel.

(b) The Board of each Faculty shall maintain a standing panel of sixteen or more experts in each subject of studyand every expert to be nominated by the ViceChancellor under subSection (4) shall be a person whose name is borne on

the panel.

(c) A panel referred to in clause (a) or clause (b) shall be revised after every three years.

Explanation I. For the purpose of this subSection, a branch of subject in which a separate course of study is prescribed for a postgraduate degree or for Part I or Part II thereof shall be deemed to be a separate subject of study.

Explanation II Where the post of teacher to be selected is in common to more than one subject of study, the expert may belong to either of such subjects of study".

39. Thus, we find that the Chancellor has to draw a panel of experts after consulting with the Faculty of Indian Universities etc. and a panel shall be maintained.

40. Thus, we find that the selection committee in the case of Lucknow University has not been constituted under any service rules but has been constituted under the Act. U.P. Act No. 4/94 does not provide that if the selection committee has been constituted under a particular provision of the Act, then the constitution of that committee shall also be in accordance with the provisions of Section 7 of the U.P. Act No. 4/94. This Act does not supercede or does not make any amendment in Section 31 of the U.P. State Universities Act. The amendment in the constitution of the Selection Committee cannot be made by the Govt. Order, Executive instructions, bye laws, notification, regulations etc. as it is evident that no Govt. order or executive instruction can amend the provision which is contained in the Statute.

41. As seen in the earlier part of the judgment, the Vice Chancellor is the Chairman of the Selection Committee. In the Govt. Order dated 29.3.94 issued under the provisions of U.P. Act No. 4/94, the chairman has been given power to nominate officers of Scheduled Castes, Scheduled Tribes and other Backward classes in the Selection Committee. Under Section 31(4)(a) second proviso the Chancellor has been given power to constitute the committee, if the committee cannot be constituted in the manner provided under the Section. But Vice Chancellor has no power to nominate any person to the selection committee. Therefore, the provisions of U.P. Act No. 4/94 will not in any way affect the constitution of the committee under Sec. 31(4)(a) of the U.P. State Universities Act. Thus, the constitution of the committee framed for selection of Professors, in the present case, is legal and proper. Thus, it is held that Sec. 7 will not come in the way of the Chancellor to constitute a selection committee in accordance with the provisions of Sec. 31(4)(a) of the U.P. State Universities Act and Sec. 7 of U.P. Act No. 4/94 shall not apply in such cases.

42. Section 15 of the U.P. Act No. 4/94 provides that the provisions of this Act will not apply in those cases where the selection process has been initiated before commencement of this Act and they are to be dealt with in accordance with the relevant service rules. But it has been provided that if the selection is to be held

on the basis of interview or written test only, then selection process shall be deemed to have been started when written test and interview started. The explanation further provides that if both written test and interview are to be held, then process of selection will be deemed to have been started from the date of written test.

43. In the present case, as seen in the earlier part of the judgment, the advertisement was issued much before commencement of the Act but interviews were held between 4.4.94 to 22.4.94. These two dates fell after coming into force U.P. Act No. 4/94. Therefore, if it is held that the selection process in the present case started from the date of interview then the provisions of Section 15 of the Act will apply.

44. Learned counsel for the petitioners have further argued that in the present case even the provisions of Section 15(1) of the Act will not apply because in the U.P. State Universities Act there is no provision for selection of Professors, Readers and Lecturers by way of written test or interview. A reference has been made to the provisions of Statute 11.05 framed under the U.P. State Universities Act, which is being reproduced below:

"11.05 (a) Meetings of the selection committee for appointment of teacher in the University shall be convened under the orders of the Vice-Chancellor.

(b) The selection committee shall not consider the name of a person for appointment as teacher of the University unless he applies for it:

Provided that in the case of appointment of a Professor, the Committee may, with the approval of the Vice-Chancellor, consider the names of persons who have not applied.

(c) A member of the selection committee shall withdraw from a meeting of the committee or of the Executive Council, as the case may be, if the question of appointment of any of the relatives (as defined in the Explanation to Section 20) of such member is being or is likely to be considered at such meeting".

45. A perusal of this Statute will go to show that the meeting of the selection committee is to be convened under the orders of the Vice-Chancellor and a provision has further been made that in case of appointment of Professors, the Committee may, with the approval of the Vice-Chancellor, consider the names of the persons who have not applied.

46. It has nowhere been provided under the U.P. State Universities Act or the Statute that for selection to the post of Professors, Readers and Lecturers, the selection committee has to hold written test or interview. Therefore, the selection committee is not bound by any procedure of written test or interview. It has merely to select out the candidates the best on the basis of biodata furnished by the candidates. As seen in the earlier part of the judgment, that with the previous approval of the Vice-Chancellor under the provisions of the Statute 11.05 in the case of Professors, the names of the persons, who have not even applied,

can also be considered in such meeting. Thus, in the case of Professors there is a definite provision that the candidates need not apply and the selection (committee with the approval of the ViceChancellor can select a person without his being a candidate. All these provisions show that no interview or written test is provided under the provisions of the U.P. State Universities Act or the Statute framed there under.

47. It has also been referred to in the earlier part of the judgment that the explanation to Sec. 15(1) of the U.P. Act No. 4/94 provides that the selection process shall be deemed to have been initiated where under the relevant rules, the selection is to be made on basis of written test or interview, as the case may be, has started. In the present case, the U.P. State Universities Act or the Statute does not provide for selection of Professors, Readers and Lecturers through written test or by means of interview. Therefore, this provision will also not apply.

48. It has further been seen that Sec. 15(1) states that the provisions of this Act will not apply in such cases where the selection process has been initiated before commencement of this Act, but those cases have to be dealt with in accordance with the provision of law or the Govt. Order as they stood before commencement of this Act and the explanation to it also clarifies this position that the selection process is deemed to have been initiated where the written test or interview has started. When under the U.P. State Universities Act, written test or interview is not the prerequisite condition for selection of Professor, Reader and Lecturer, the provisions of U.P. Act No. 4/94 will not apply in view of specific provisions of Section 15 of this Act.

49. Thus, on the basis of aforesaid discussion, it is held that the provision of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (U.P. Act No. 4/94) shall not apply to the selection for the post of Professors, Readers and Lecturers under the U.P. State Universities Act.

50. In Writ Petition No. 783(SB) of 1994 Dr. Navjiwan Rastogi v. State of U.P, learned counsel for the petitioner has drawn the attention of the Court that the Selection Committee has made its recommendations, but the same has not been put up before the Executive Counsel for approval. According to the learned counsel in other writ petitions by virtue of an interim order of this Court in those writ petitions, the report of the Selection Committee was put up before the Executive Counsel, who has considered the same and only appointments in those cases are to be made. It is further argued that if the appointment letters to those candidates are issued and the appointment letter to this petitioner is not issued simultaneously, then he will lose seniority in the same cadre of Professors to which appointments are to be made on the basis of the recommendations duly approved by the Executive Counsel.

51. Therefore, in order to obviate this difficulty it is directed that the ViceChancellor shall place the report of the selection committee before the

Executive Counsel for selection of the candidates for the post of Professor in the department of Sanskrit with in three days of this order and the Executive Counsel shall consider and decide the report of the Selection Committee with respect to Dr. Navjiwan Rastogi, petitioner in W.P. No. 783(SB)/94 with in next three days and the appointment letters shall be issued to all the successful candidates in that department simultaneously on the same day.

52. An argument has also been placed before this Court that the Executive Counsel has completed its selection process with respect to three departments viz. applied Economics, Politics and Modern Indian History. It is further argued that the petitioners should be given back date promotions and the seniority may also be given from the date of the decision of the Executive Council. This court will not express any opinion on this point and it is left open to the University authorities to decide the seniority of the successful candidates in accordance with law regarding seniority.

53. Writ Petition No. 489 (SB) of 1994 filed by Navjiwan Rastogi has become infructuous as stated by the learned counsel for the petitioner because of filing of Writ Petition No. 783(SB) of 1994 by the same petitioner.

54. Thus, in view of aforesaid discussions, Writ Petition No. 489(SB) of 1994 and Writ Petition No. 506(SB) of 1994 are dismissed while Writ Petition Nos. 783(SB) of 94, 876(SB) of 94, 877(SB) of 94 and 878(SB) of 94 are allowed. In writ Petition No. 783(SB) of 94 it is directed that the recommendations of the Selection Committee shall be placed before the Executive Counsel as indicated in the earlier part of the judgment and after considering the report, appointment letter shall be issued to all the successful candidates simultaneously on the same day. The advertisement dated 2231995 contained in Annexure14 to the W.P. No. 783(SB) of 1994 is here by quashed. It is further declared that the U.P. Public Services (Reservation of Scheduled Castes, Scheduled Tribes and other Backward Classes) Act 1994 and the roster notified under Section 3(5) of the said Act would not apply to the universities governed by the U. P. State Universities Act. There shall be no order as to costs.