

(1982) 08 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petitions No's. 211, 212, 217, 218, 225, 235, 240 and 247 of 1980 and 4, 43 and 55 of 1981

Ramesh Kumari and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 16-08-1982

Acts Referred:

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

Citation : (1982) 11 ILR HP 517

Hon'ble Judges : V.D. Misra, C.J.;H.S. Thakur, J

Bench : Division Bench

Advocate : Chhabil Dass, K.D. Sood and A.K. Goel, for the Appellant; Inder Singh, General, for the Respondent

Judgement

V.D. Misra, C.J.—There is a Non-Gazetted Officers Union in the State. The membership consists of non-gazetted officers working in the Government Departments of the State. They went on strike on 8th September, 1980. The strike was declared illegal. Public statements were made by responsible officers of the State warning the strikers that the Government had no intention of condoning the illegal strike which was to be dealt with firmly. As the strike progressed and the Government work suffered, "the Government decided to recruit minimum essential staff such as stenographers, typists, diarists and messengers on daily wages or on temporary basis to meet the situation arising out of strike where it was not possible to employ staff on daily wages." Employment Exchanges were directed to sponsor the names of candidates possessing the necessary minimum qualifications. Various persons were employed on daily wages. Some were employed on regular basis also. As usual, the Government accepted practically all the major demands of the Non-Gazetted Officers' Union and promised to take back all the persons who had gone on strike. The strike was thereafter called off on 12th October, 1980.

2. A notification for special recruitment for Class-III and Class-IV posts was

issued calling upon the candidates already-registered with various Employment Exchanges upto the dates mentioned in the notification to present themselves at the respective District headquarters on 4th October, 1980, at 10 A.M. (Annexure-PD). It was clarified that all those who had earlier been sponsored by Employment Exchanges for special recruitment after September 6, 1980, "shall also report for these tests/ interviews at their respective district headquarters." This notification contained necessary minimum qualifications for eligibility. As it was desired to give weightage to candidates belonging to low income groups, they were directed to bring an income certificate to show that the income of the family was less than Rs. 6,000/- per annum. If in any candidate's family "no member is employed in Government offices, institutions wholly or partially owned by Government, Universities, Colleges and Schools, industrial establishments and other public or private establishment etc." he was required to produce such a certificate. The family was defined to mean "parents, brothers and unmarried sisters of the candidates." This recruitment was made according to the "new recruitment policy adopted and circulated by the Government vide letter dated 27th/29th September, 1980" (Annexure-RA). The interview carried 50 marks. These were divided into four categories. We will advert to it a little later. On the basis of this interview many candidates are stated to have been selected and given regular appointments.

3. A batch of writ petitions has been filed by various persons. Since common questions of law and fact have arisen, these are being disposed of by this judgment. It is alleged that the Petitioners had agreed to join Government service on the basis of various pronouncements made by the Government during the strike period. It is averred that the Government had announced that every person recruited during the strike period to meet the emergency would be given regular employment even if the strike ends. Such an assurance appeared in various newspapers and was made even on the radio. This assurance is said to have been given by the Chief Secretary (Respondent No. 2). When the Petitioners joined service, some were given letters of appointment while some could not be given the appointment orders due to paucity of staff working in different departments. The Petitioners appeared for the aforesaid interview but were not selected. They have been asked to go. It is the contention of the Petitioners that the State is estopped from terminating their services. It is also contended that the interviews were only a sham and make-up show since practically no questions about experience or on other relevant matters were asked. If the Petitioners are to be believed, the only questions asked in the interview were the name of the candidate, father's name, and whether they belonged to either of the groups to which weightage has been given by allotting marks in the recruitment notification dated 27th/29th September, 1980 (Annexure-RA). One of the allegations is that many times a candidate was interviewed by a single member, that is Deputy Commissioner, Simla, and other members of the Selection Committee were not even present. It is also contended that the notification itself is bad, illegal and ultra vires since the weightage given

to the groups has no nexus with the object tried to be achieved.

4. The State denies making any commitments whatsoever for giving the persons recruited on daily wages a regular employment after the strike. The statements appearing in the press are stated to be baseless. It is stated that the appointment letters issued to the Petitioners make it abundantly clear that they were being appointed on daily wages and since they had accepted to work on daily wages, so they are estopped from claiming regular appointments on the basis of alleged statements. The purpose of the latest recruitment policy adopted by the Government vide notification dated 27th/29th September, 1980, is "to improve the lot of socially and economically backward sections of society." The selections are stated to have been made by the Joint Selection Committee formed for the purpose under the chairmanship of the Deputy Commissioners. All the selections were to be made and have been made on the basis of interviews. It is stated that if any person succeeded in getting the marks reserved for a particular group on the basis of wrong certificate or declaration, that does not mean that there was anything wrong with the classification, and that such a person would be dealt with according to rules for having given a false certificate.

5. Affidavits have been filed by Shri K.C. Pandeya, Chief Secretary to the Government of Himachal Pradesh, as well as by Shri Mohinder Lal, Deputy Commissioner, Simla. The Chief Secretary has categorically stated that "I never stated that the Government had decided to start regular recruitment to replace striking staff and the services of the recruited persons would not be terminated even if the strike was called off and no such assurance or undertaking was given by me. These facts are being incorrectly attributed to me." Shri Mohinder Lal has denied that the interviews were either a sham or a make-up show. He admitted that under the instructions no type/written test was conducted as it was not necessary. He went on to say that as a matter of fact selections have not so far been made by the Selection Committee. He also denied that the interviews were held by him alone. It was stated that on 4th October, 1980, when some candidates claimed that none of their family members were in service and that their family income was less than Rs. 6,000/- per annum, the Selection Committee gave them another opportunity and asked them to furnish their certificates by 8th October, 1980. It is reiterated that no selection has yet been made. However, Shri Mohinder Lal did not specifically controvert the allegations (made in para 9 of the petition) that "no questions on experience and other matters were asked." The only fact stated in the affidavit on this aspect is that the "interview was conducted in accordance with all norms adopted and in accordance with the requirement of the posts for which the candidates were to be interviewed.

6. During the course of hearing the Petitioners were allowed to place on record a copy of the Government publication Hindi Weekly "Giri Raj" dated 17th September, 1980. We had also summoned the record of the announcement made in the Pradeshik Samachar by the All India Radio, Simla. The State was given an

opportunity to file additional affidavits with respect to these. On 25th November, 1981, we examined Shri M.P. Chopra, Assistant News Editor, All-India Radio, Simla, in connection with the announcement made in the Pradeshik Samachar. He placed on record a transcript (Ex. PA) of the news broadcast in the programme Pradeshik Samachar on 13th September, 1980. The relevant part of this reads:

Pradesh sarkar dwara jari ek "vigyapti ke anusar sarkar ne nirmaya liya hai ki hartali karamchari on ke sthan par niyमित roop se nai bhartiyan arambh kardi jayengi. Vigyapti mai yeh bhi kaha gaya hai ki ye nai bhartiyan sthai roop se ki jayengi.

Freely translated, it reads:

According to the press-note issued by the State Government, the State has decided that new regular recruitments will be started in place of Government servants on strike. Press-note also states that the new recruitment will be on permanent basis.

Shri M.P. Chopra stated that they have various sources for collecting news. Some are received on the telephone, some are the press-notes of the State Government and also press-notes of various organisations. News are also collected from the correspondents of the All-India Radio. All these news are scrutinised by the Assistant News Editor. They are drafted by him in the form of news items to be broadcast. He admitted that his office did not have the practice of keeping any regular records of the press notes though it was possible that some press-notes were still available. He was cross examined by the Advocate-General and asked if he had received the press-note from the Government about the afore-mentioned announcement. He stated that he did not remember whether the press-note was received in writing or on the telephone. He went on to depose that when a communication is received, it is reduced into writing but no regular record is kept.

7. Now in the weekly paper "Gin Raj", which was published on 17th September, 1980, a statement attributed to the Chief Secretary, Shri K.G. Pandeya, was published. This statement was stated to have been made on the previous Friday which would place it on the 11th of September, 1980. The Chief Secretary is stated, inter alia, to have said:

Rojgar dafton se kaha gaya hai ki ve bharti ke liya umeedvaron ki suchiyan taiyar rakhen. Ye bhartiyan niyमित roop se ki jayengi.

Freely translated, it reads:

The employment exchanges have been told to keep the list of candidates for recruitment ready. These recruitments will be made on regular basis.

Shri Keshav Narayan, Assistant Editor of "Giri Raj" has filed his affidavit to say that in the newspaper the phrase "YE BHARTIYAN NIYAMIT ROOP SE KI JAYENGI"

was used since he heard the news on the All-India Radio, Simla. He deposes that the newspaper was to be printed in 14th September, 1980, and its despatch was to start from Monday the 15th September, 1980, though the date-line on the Weekly was 17th September. We may record that whereas Shri M.P. Chopra of All-India Radio, Simla, was examined in the Court on 25th November, 1981, the affidavit of Shri Narayan is dated 26th November. It may be noticed that we had received a transcript of the news of the All-India Radio, Simla, on 20th November, 1981. Our order dated 20th November, 1981, records in detail what happened in the Court. We had the intention of taking the transcript on record when the Advocate-General raised an objection about its admissibility. It was contended that the Government had no opportunity to meet it. It was pointed out by us that the State was at liberty to meet this material since we were going to keep it on record as we found it relevant. It was also made clear that we intended to summon an officer from the All-India Radio, Simla, in respect of the transcript which was handed over to us. On 25th November, 1981, an affidavit of Shri Diljeet Singh, Under Secretary (Public Relations), was filed by the State. This affidavit is dated 24th November, 1981. He stated that "there is nothing in the record to warrant" the statement already extracted from the transcript of the news broadcast on 13th September, 1980. It was specifically stated that there were no Government press-notes or any communique on the basis of which the news should have been broadcast. He had enclosed the copies of the Government press-notes issued on 11th and 16th September, 1980. The press-note of 11th September, 1980, records the statement made by the Chief Secretary. It states: "Shri Pandeya said that Government had directed all Heads of Department to recruit fresh candidates in place of those employees who had gone on strike." The other press-note of 16th September, 1980, is not relevant. However, it states: "efforts for filling up vacancies caused by striking employees are going on. Employment Exchanges have been asked to sponsor suitable candidates for filling in the vacancies caused due to the striking employees. The State Government reiterates its assurance that it will not take any action against those striking employees who resume their duties. The Government is ready to talk with any Association or section of the employees who are not on strike or who resume their duties."

8. On 25th November, 1981, we recorded the statement of the Advocate-General who stated that it was "difficult to agitate" about the news item referred to in our earlier order since it was not legal evidence. We had to impress all over again on the Advocate-General that it was his choice to address us at that stage though we will not allow any legal technicalities to stop the arguments which were going on. At the same time we directed the summoning of a responsible officer of the All-India Radio to prove whether the news were broadcast or not. It is in that light we have to assess the veracity of Shri Keshav Narayan who, after the statement of Shri Chopra was recorded, decided to say that the news on All-India Radio were the basis of his inserting the material sentences that the recruitments were to be made on regular basis. How we wish that the Government had come

forward quickly with their version about it instead of dilly-dallying till the last minute. After all, a transcript of the news broadcast on the All-India Radio was placed on our record as far back as 19th November, 1981.

9. The first question which arises for determination is whether any statement was made by the State assuring the new recruits that they will be taken on regular basis and their services will not be terminated even if the strikers resumed their duties. The next question then would be about the effect of such a statement. The last question will be regarding the validity of the new recruitment policy of the Government announced vide notification, dated 27th/29th September, 1980.

10. The facts discussed above show that "Giri Raj" did attribute a statement to the Chief Secretary. The alleged statement no doubt is to the effect that the new recruitments were to be made on regular basis. But then the Chief Secretary has sworn an affidavit that he never made such a statement. How this statement came to be published in the official paper "Giri Raj" remains a mystery. It is true that Shri Keshav Narayan, Assistant Editor of "Giri Raj", has said on affidavit that the sentence "Yeh Bhartiyan Niyamit Roop Se Ki Jayengi" was based on the news heard by him on the All-India Radio on 13th September, 1980. He goes on to say that "as I was pressed because of the time and space I inserted the news quoted above in the last line of the relevant para", since the Weekly was to be printed on 14th September, 1980. We are hesitant in relying on his affidavit. We have already recorded in detail the course of events during the proceedings in the Court. It may be recalled that the relevant extract of the news-item from "Giri Raj" had been placed on record as far back as 4th January, 1981. It was by an order dated 19th November, 1981, that we directed the summoning of the news-item broadcast by the All-India Radio, Simla. It was followed by the statement of Shri M.P. Chopra, Assistant News Editor of All-India Radio, Simla, recorded on 25th November, 1981. On the same date the issue of "Giri Raj" was placed on record. The affidavit of Shri Keshav Narayan was placed on record on 27th November, 1981, that is after the statement of Shri M.P. Chopra had been recorded. Now a convenient excuse was available to Shri Keshav Narayan. He would have us believe that he remembered after more than a year that the crucial line was added because of the broadcast of the news by the All-India Radio. It may be noticed that though the All-India Radio did not keep any record of the various press-notes issued by Governmental agencies but they also received news on the telephone. Of course Shri Chopra did not remember how this particular news-item was received at his office. We are constrained to record that the conduct of the State in respect of these facts leaves much to be desired. Since the Chief Secretary has deposed that he never made the statement in question, we have to hold that the news-item attributing the statement to him in the "Giri Raj" loses its importance inasmuch as the Government cannot be held to be bound by it. It is of course unfortunate that such important announcements in the official newspaper, which are expected to be acted upon by the public at large, have been shown to be made without due care and caution. Be that as it

may, neither the broadcast nor the said publication can give any right to the Petitioners to claim promissory estoppel.

11. It is true that in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, the Petitioners had acted on the basis of a news-item. However, it was found that this news-item was based on a statement made by the Secretary. Moreover the Petitioners had got the fact confirmed from the Government. It was in these circumstances that the Court applied the doctrine of promissory estoppel. We need not go into the question of promissory estoppel and its effect since we have come to the conclusion that the alleged statement was never made by the Chief Secretary.

12. Notification, dated 27th/29th September, 1980, (Annexure-RA) is assailed on the ground that weightage given to candidates by allotting marks is unreasonable and has no nexus with the object sought to be achieved. We may reproduce the relevant part of this notification for appreciating the contentions of the parties. It reads:

Subject.-Procedure for recruitment for Class III and Class IV posts/services not within the purview of the Himachal Pradesh Public Service Commission.

The undersigned is directed to state that in supersession of all previous instructions on the subject, it has been decided by the Government that fresh recruitments pertaining to all Class III and Class IV posts/ services will be made on the basis of an interview which will carry 50 marks as follows:

(a) For belonging to a family of whom not even one member is in organised employment .. 10 marks. (b) For belonging to a family whose annual income does not exceed Rs. 6,000/- .. 10 marks. (c) Minimum educational qualifications .. 10 marks. (d) General knowledge, experience and personality .. 20 marks. Total .. 50 marks.

2. The word "family" has been defined by the Government as "parents, brothers and unmarried sisters of the candidate".

3. The allotted marks for minimum educational qualifications will be in proportion to the percentage of marks obtained by the candidate in the examination concerned. The candidates who have obtained 28, 42, and 63% marks in the concerned examination, will be given 2.8, 4.2 and 6.3 marks respectively. The candidates wishing to avail of benefit of (a) and (b) above will have to give declaration and certificates in the proforma at Annexure "AA" and "BB".

13. It is contended that allotment of 10 marks to a candidate belonging to a family of whom not even one member is in organised employment, has no nexus to the object of "to improve the lot of socially and economically backward sections of society". It is submitted that a flourishing businessman whose family members do not have employment in organised sector will be entitled to get 10 marks whereas a really poor candidate will also get the same marks. Again the family has been denned in such a fashion that no distinction is made between

married and unmarried brothers. In practice these days, it is submitted, married brothers are more concerned in looking after their own family than in looking after their unmarried brothers and sisters or parents. In other words, candidates, whose one or more married brothers may be employed in organised sectors, have been placed at unnecessary disadvantage. Annexure-A is the proforma of a declaration which each candidate has to fill. Under items Nos. 6 and 7 a candidate is required to give details of the property, agricultural/non-agricultural, owned by each member of his family. Similarly under column No. 7 income per month or yearly from agricultural and non-agricultural sources has to be given. These columns may be necessary only for the purpose of finding out if the total income of the family exceeds Rs. 6,000/- per year or not. It is suggested that there may be a case where a candidate's family may be behaving properly in the form of houses which have not been rented out and technically no income is being derived from those sources. Though such persons will neither be economically or socially backward, they will get the weightage.

14. Notification for public appointments (Annexure-PB) calling upon the candidates registered with various employment exchanges for interview for 4th October, 1980, is also assailed. It is submitted that for the posts of clerks (Class-III) the minimum qualification was laid down as Matriculation or above. The desirable qualification was of Hindi/English type and the speed was of 20/40 words per minute respectively. For English Stenographers though the minimum qualification was the same, speed in shorthand and typing was laid down as 80/30 words per minute. Similarly, speed for Hindi Stenographers, Stenotypists in English and Hindi was also laid down. Now, admittedly no test in typing was conducted at the time of interview. In other words, no weightage was given to persons who knew Hindi or English typing at the requisite speed while selecting the clerks. Similarly, there is nothing on the record to show that any tests for the Stenographers/Stenotypists were conducted.

15. It is the case of the State that the object of these rules is to do social and economic justice to the down-trodden and the weaker sections of the society.

16. We will now notice the development of law in respect of Articles 15 and 16 of the Constitution with which we are concerned. It is no doubt true that the principle of classification should be founded on intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved.

17. In *Swami Motor Transport (P) Ltd. and Another Vs. Sri Sankaraswamigal Mutt and Another*, it was ruled that Article 14 of the Constitution embodies the principle of classification, namely, that classification must be founded on intelligible differentia and the differentia must have a rational relation to the object sought to be achieved by the statute in question; and that the classification may be founded on different bases, such as, geographical, or according to objects or occupations or the like.

18. In *J. Pandurangarao Vs. Andhra Pradesh Public Service Commission*, the

ambit of Article 14 was described thus:

The scope and effect of the provisions of Article 14 can no longer be the subject-matter of any doubt or dispute. It is well-settled that though Article 14 forbids class legislation, it does not forbid reasonable classifications for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. As the decisions of the Court show, the classification on which the statutory provision may be founded, may be referable to different considerations. It may be based on geographical considerations or it may have reference to objects or occupations or the like. In every case, there must be some nexus between the basis of the classification and the object intended to be achieved by the statute.

19. Article 16 guarantees equal opportunity for all citizens in matters relating to employment or appointment to any office under the State. It follows the concept of equality before law or equal protection of the laws enshrined in Article 14. Clause (4) of Article 16 is an exception to the general rule of equality of opportunity. It enables the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, place of birth or any of them. Clause (4) of this Article is like a proviso which enables the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

20. The Supreme Court in *Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others*, observed:

The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and, in that event a court may hold that there is no reasonable nexus between the differences and the recruitment. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State makes a classification between two sources of recruitment, unless the

classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and violative of Article 16 of the Constitution.

21. The Supreme Court in *M.R. Balaji and Others Vs. State of Mysore*, while holding that the special provisions in terms of Article 15(4) could be made by an executive order and that it has to be read as a proviso or an exception to Article 15(1), ruled:

In considering the scope and extent of the expression "backward classes" under Article 15(4), it is necessary to remember that the concept of backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would be several layers or strata of backward classes and each one of them may claim to be included under Article 15(4)... The backwardness under Art 15(4) must be social and educational.

It is because the interest of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4).

In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Article 15(4) it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations.

22. This view was again adopted by the Supreme Court in *Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others*, as well as in *Kumari K.S. Jayasree and Another Vs. The State of Kerala and Another*, In *State of Kerala and Anr. v. N.M. Thomas and Ors.* 1976 (1) S.L.R. 805, the Supreme Court ruled that the State should take into consideration the claims of the backward classes consistently with the maintenance of the efficiency of the administration and that it must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration. That there is no difference in the phraseology used in Articles 15(4) and 16(4) both in socially and educationally backward classes, was reiterated in *Triloki Nath Tikku and Another Vs. State of Jammu and Kashmir and Others*,

23. It is true that the Supreme Court in *the Union of India (UOI) and Others Vs. C. Damani and Co. and Others*, observed that the court should consider the constitutional questions when it is absolutely necessary and not otherwise.

However, no reason has been advanced to persuade us not to examine the vires of the recruitment policy.

24. The Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, observed that any action taken by the Government with a view to giving effect to anyone or more of the directive principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a directive principle would *prima facie* incur the reproach of being unreasonable.

25. In *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, it was held:

The principle underlying Article 15(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Article 15(4) .

26. A Division Bench of the Allahabad High Court in *Chhotey Lal Pandey and Others Vs. State of Uttar Pradesh and Another*, summarised the three basic principles emerging from Chanchala's case thus:

(1) the State has power to lay down classifications or categories of persons from whom recruitment to the public service may be made;

(2) the principle underlying Article 15(4) and 16(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society; and

(3) this principle may be applied to those who are handicapped but who do not fall under Article 15(4).

27. In *R. Chitralekha and Another Vs. State of Mysore and Others*, it was observed by the Supreme Court that so long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, the court cannot have any say in the matter. It was also observed that if in any particular case the selection committee abuse its power in violation of Article 14 that may be a case for setting aside a particular interview.

28. In *Abhay Kumar Jayaswal Vs. The Principal, Darbhanga Medical College and Others*, the applicant for admission to the M.B.B.S. course was required to produce a certificate of income of his father since under the rules preference for admission was to be given to only those applicants of backward classes whose father's income was less than Rs. 3000/- per annum. It was held that since poverty is one of the decisive tests, the condition could be put for preference to applicants for seats reserved for backward classes.

29. In the case of Jayasree (supra), she was refused admission though she belonged to backward community because the income of her family from all sources was more than Rs. 10,000/-per annum. The Supreme Court up-held the refusal on the ground that caste and poverty are both relevant for determining the backwardness, and that socially and educationally backward classes of citizens in Article 15(4) cannot be equated with castes. It was observed that neither castes alone nor poverty alone will be determining factor of social backwardness.

30. In Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, a total of 75 marks was reserved for interview. There was no rule to prescribe separate marks for separate heads though five criteria were prescribed for interview. It was observed that it should be presumed that each head carried 1/5th of the interview marks and the marks given in a lump sum were clearly illegal.

31. In Lila Dhar Vs. State of Rajasthan and Others, a competitive examination for recruitment of Munsif for Rajasthan Judicial Service, consisted of written examination with two papers in law and two papers in Hindi and English. The viva-voce examination carried 100 marks whereas the written examination carried in total 300 marks. It was contended that too much weight has been given to the interview. The Court observed that weight to be given to the interview will depend whether recruitment is to be made from persons of mature personality or from younger candidates. Greater weight has to be given to the written test where the personality had still to be developed, but where personality had already developed, more weight could be given to the interview though there cannot be any rule of thumb regarding the precise weight to be given to the written test and the interview.

32. In AIR India Vs. Nergesh Meerza and Others, the Supreme Court summarised the ambit of Article 14, as follows:

Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge:

(1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Article 14 cannot be attracted.

(2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus

with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Article 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself" and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

(a) the nature, the mode and the manner of recruitment of a particular category from the very start;

(b) the classifications of the particular category;

(c) the terms and conditions of service of the members of the category;

(d) the nature and character of the posts and promotional avenues; and

(e) the special attributes that the particular category possess which are not to be found in other classes, and the like.

It was also observed that even though the conditions imposed may not be violative of Article 14 on the ground of discrimination but are entirely unreasonable and absolutely arbitrary, then the provisions must be struck down.

33. The conspectus of the above decisions show that it is permissible for the State to make special provisions for the advancement of socially and educationally backward classes of citizens. The stand taken by the State is that the new recruitment policy adopted and circulated by the Government vide letter, dated 27th/29th September, 1980, is "to improve the lot of socially and economically backward sections of society." A reference has been made to the notification (Annexure-PD) calling upon the candidates for interviews for 4th October, 1980. It is submitted that para 4 of this notification is meant to achieve that object. This para reads:

4. (i) Income certificate for candidates whose family income is less than Rs. 6,000/- (rupees six thousand) per annum.

(ii) Certificate in case of those candidates in whose family no member is employed in Government offices, institutions wholly or partially owned by Government, Universities, Colleges and Schools, Industrial Establishments and other Public or Private Establishment etc.

Giving the weightage of 10 marks to a person belonging to a family whose annual income does not exceed Rs. 6,000/-, seems to be in order. However, the difficulty arises, when one looks at the definition of the word "family". This definition does not include spouses. In other words, the income of a husband or a wife of a candidate who may be earning fabulously has not been taken into consideration. There also seems to be no justification for not excluding married brothers of a candidate. A married brother has his own obligations and so it does not stand to reason that his income should be taken into consideration for deciding the question of weightage for a candidate.

34. Coming to the other criteria whether any member of the candidate's family is in organised employment, this does not seem to help in the achievement of the object. If the family of a candidate is running its own business successfully, he will still be entitled to 10 marks whereas a candidate whose father is working as a peon in one of the establishments referred to in Clause (4) above, would lose 10 marks. In other words, this condition does not help to achieve the object of assisting a socially and economically backward family. Indeed a case was brought to our notice where a candidate got employment as a clerk though her family was running a good business at the Mall, Simla. There may also be a case where a peon, working in a Government department, wants to compete for the post of a clerk. He is going to lose 20 marks under the categories (A) and (B) though he may be the only earning hand in the family as defined. It is common knowledge that peons are constantly trying to improve their standards of living. As regards the other two criteria mentioned as (C) and (D), there seems to be nothing wrong with it.

35. We will now examine how the criteria were in fact applied in the interviews held on 4th October, 1980. Though the notification referred to the desirability of or candidate knowing typing in Hindi/English for Class-III posts, admittedly no test was held in order to find out whether the candidate knew it or not. It is submitted that the tests are held by the employment; exchanges and the certificates issued by them were taken into consideration. In our opinion it is not necessary that the interview board should hold the test.

36. The record of the interviews held at Simla have been placed before us. It bears the signatures of various persons who were members of the committee. Marks for "general knowledge, experience and personality", which item carried 20 marks, have been given in lump-sum. As already stated, the Petitioners allege that no questions on experience and other matters were asked. There is no express denial to this important fact.

37. In *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, marks were for interview. These were to be awarded on the basis of five criteria. But the selection committee gave the marks in lump sum. It was held that since the selection committee had not divided the interview marks under various heads nor were the marks given on itemized basis but were given in a lump sum, this was clearly illegal.

38. Now the record of the selection committee as regards Class-IV employees shows that as many as 192 persons were interviewed. The most disturbing feature is a fact that no date has been mentioned anywhere in most of the sheets. At some places a member has mentioned the date as 4-10-1980. Another fact to be noticed is that the members of the selection committee varied depending on the vacancies with respect to different departments. We find that on page 57 of the record one of the members (D.E.O.) has put down the date as 20th February, 1981. On page 56 the same member has put the date as 20th February, 1981, whereas the other member has put the date as 4-10-1980. It is thus evident that D.E.O. was not present at the time of interview. Apparently his signatures have been obtained later on. It is shocking indeed that such things have been done in order to show that the persons have been selected by the proper selection committee.

39. The record relating to the selection of Class-III employees reveals that as many as 423 candidates were interviewed. As usual, the record does not show the date of interview. If all these candidates were interviewed on one day, it shows that it was impossible to give more than one to two minutes to each candidate and the result would be that arbitrary marks must have been allotted with respect to "general knowledge, experience and personality". There are cases also where in the interview high marks have been obtained by those who had obtained very low marks in the examination. For example, at page 89 at SI. No. 17 is one Miss Nirmala who obtained only 3.1 per cent marks for educational qualifications, she was given 11 marks for general knowledge etc., whereas the next two candidates at SI. Nos. 18 and 19 who had secured 5.4 and 5.6 marks for educational qualifications, got only 10 and 11 marks. Another person at SI. No. 1 on page 89 who got 5.8 per cent marks for educational qualifications was given only 10 marks. In one case on page 65 one Miss Kamla Devi who, to begin with, got 9 marks for interview was, later on, given two more marks. This appears to have put her up very high in the total marks. All this shows that the interviews were held in a very undesirable manner.

40. The records of the selection committees for various Districts have been placed before us. We have gone through them. We find that selection committees for Districts Solan, Kangra, Bilasrur and Kulu have given lump sum marks in respect of general knowledge, experience and personality. The records of District Una do not show how the selections were made though the final typed list of the candidates is on record. As regards the records of Chamba, Mandi and Hamipur districts, these show that separate mark; for general knowledge, experience and personality were awarded. The records for District Sirmur placed before us show only the names of the candidates selected after the interview.

41. We find that in the return filed by the State in Civil Writ Petition No. 217 of 1980, it is stated that nobody has been selected on the basis of interviews.

42. We are constrained to quash all the interviews. As already pointed out, uncalled for weightage has been given. Some of the proceedings of the selection

committees are also bad on account of their giving lump sum marks in respect of general knowledge, experience and personality.

43. The result is that Civil Writ Petitions Nos. 211, 212, 217, 218, 225, 235, 240 and 247 of 1980, and 4, 43 and 55 of 1981 are partly allowed as aforementioned. No order as to costs.