

(2000) 02 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : LPA (S) Nos. 375 of 1998 and 20 of 2000

Virender Kumar Koul

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Constitution of Jammu and Kashmir, 1956 — Section 124

Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980
— Rule 57

Citation : (2001) 4 SCT 34

Hon'ble Judges : Tejinder Singh Doabia, J and Arun Kumar Goel, J

Bench : Division Bench

Advocate : S. Kakkar, P.S. Dutta, D.C. Raina, Z.A. Shah, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—In addition to the submissions which are based on law and facts, the appellants whose appointments have been

quashed and also the State of Jammu and Kashmir has pleaded that the period during which the appointments came to be made was a period

when the State was under the shadow of militancy. It is accordingly submitted that a slight deviation even if found in the procedure which was

required to be followed in the method of making appointments should be ignored. It is admitted that the writ petitioners also participated in the

process of selection and they were not able to come high in the merit. At one point of time, the learned Counsel appearing for the respondentwrit

petitioners submitted that the State should examine the possibility of adjusting the writ petitioners whose writ petition stood allowed and examine as

to whether the humanitarian approach which was adopted by the Supreme Court

of India in the case of H.C. Puttaswamy and others v. Hon'ble

Chief Justice of Karnataka High Court, Bangalore, 1991(1) SCT 116 (SC) : AIR 1991 SC 295 could be adopted in this case or not. This aspect

of the matter was duly taken note of on 12th of May, 1999. Beyond making suggestions on this aspect nobody has come forward to shoulder

responsibility for implementing this suggestion. It is in the light of above circumstances and taking note of the situation then prevailing in the valley

when the normal process stood derailed submission of the appellants whose appointments have been nullified by the learned Single Judge and of

the State who wants its action to be upheld and also of the respondent writ petitioners who want to have some relief in the light of Judgment in H.C.

Puttaswamy's case (supra) are being noticed.

2. Facts are as under :

The writ petition preferred by the respondent writ petitioners stands allowed. The appointment of private respondents who figure as appellants in

Letters Patent Appeal No. 375/98 was declared void ab initio. It is this order passed by a learned Single Judge which is subject matter of

challenge in these appeals preferred by the appointees whose appointments were held to be bad and the one preferred by State of J&K Bearing

No. LPA 20 of 2000. It is submitted that the action of the Government in appointing the appellants in LPA No. 375/98 was made in accordance

with the law.

3. The facts in brief are as under :

(i) The appellants in LPA No. 375/98 are working as Junior Agriculture Assistants/ Agriculture Extension Officers. They applied for the said posts

in pursuance of an advertisement Notice No. 11PSC of 1988. This was issued on 18th October, 1988. This notice was issued by the State Public

Service Commission (hereinafter referred to as the Commission). Interviews were conducted by this Commission. A panel of names were

recommended. This was vide letter dated 12th July, 1989. On the basis of this recommendation, the State Government appointed 42 candidates

as Agriculture Assistants/Agriculture Extension Officers. An order to this effect was passed on 23rd August, 1989. Later on, another Government

order bearing No. 498 Agri. of 1991 came to be issued on 29th July, 1991. By this order, twenty two more candidates came to be appointed as

Agriculture Assistants/Agriculture Extension Officers. It is these appointments which were subjectmatter of challenge in the writ petition. The

challenge was made inter alia on the following grounds :

(ii) That the panel which was originally sent by the Commission had its validity for a period of one year only. Its validity is said to have expired on

12th July, 1990. It is accordingly submitted that any appointment made after the aforementioned date would be in breach of rules and decision

given by the Supreme Court of India. It is further urged that as the life of the panel had come to an end, it was obligatory on the part of State to

refer the latter vacancies to the Commission so that fresh selection could be made. It is submitted that this could be done after inviting applications

from all eligible candidates. It is also urged that the Commission when made the recommendation on 12th July, 1989 had prepared a panel of 44

candidates. A waiting list of 30 candidates was also prepared. It is stated that no doubt the appointments were made out of the same panel but this

was done after the validity of the panel was extended. Again it is urged that the respondent writ petitioners obviously did not figure in the waiting

list and, therefore, they could not be appointed.

It is this factor which gave them a cause of action to challenge the appointment.

4. The appellants submit that they came to be appointed on the recommendation of the Public Service Commission. These appointments were

made in pursuance of the process of selection which was initiated by issuing advertisement notice by the Public Service Commission. This was vide

notice No. 11 PSC of 1988 dated 18.10.1988. It is the case of the appellants that they alongwith respondents writ petitioners applied to the

Commission for being consider for appointment. It was found that the private respondents were unable to make the grade and they could not be

appointed. The appellants' merit was found to be better and they were recommended for appointment. It is submitted that they have been working

as Agriculture Assistants/Agriculture Extension Officers since 29.7.1991 and by now have completed more than eight years of service. As

indicated above, the appointments of the appellants have been found invalid, inter alia, on the following grounds :

(i) that the Public Service Commission had no jurisdiction to extend the validity of select list after the expiry of one year. This list was to remain

valid only upto 12.7.1990.

(ii) that at the most the life of the panel could be extended by six months. This could be done by taking resort to Rule 57 of the Business Rules

framed by the Public Service Commission.

(iii) That the select panel could remain valid only for those vacancies for which applications had been invited. For coming to this conclusion reliance

was placed on a decision of the Supreme Court of India reported as Ashok Kumar and others v. Chairman, Banking Service Recruitment and

others, AIR 1966 SC 975. (It be seen that the learned Single Judge has also observed that only 44 candidates could be appointed).

(iv) that even though the appointments of the appellants were not made against the vacancies meant for promotees, it was observed that statutory

Rules could not be bypassed. Reliance was placed on a decision of the Supreme Court reported as Bangal Ram v. State of Haryana and others,

AIR 1996 SC 2920.

5. The appellants submit that the life of the select panel was extended by the Public Service Commission. This was done on a request having been

made by the State Government. It is stated that only after the life of the panel was extended, 22 more candidates came to be appointed. This was

done vide Government Order No. 493AGRI of 1991 dated 29.7.1991. It is submitted that the appointment of one candidate was cancelled

because he did not join. It is submitted that if the material which was brought on the record is appreciated properly, then there is no room for

setting aside the appointments of the appellants. In particular reference is being made to a letter bearing No. Agri 409 EST of 1985 issued on

12.10.1988. By this letter vacancies were notified by the Public Service Commission. In this letter, apart from notifying 34 posts, it was stated that

:

I am directed to inform you that 34 posts of Agriculture Assistants/Agriculture Extension Officers in the pay scale of Rs. 17002900/ are lying

vacant in the Agricultur Department. As per Jammu and Kashmir Agriculture (Gazetted) Service Recruitment Rules, 1988 (copy enclosed) the

mode of recruitment of the posts of Agriculture Assistants/Agriculture Extension Officers is 50% by direct recruitment preferably M.Sc. Agriculture

and 50% by promotion from village Extension Workers possessing B.Sc.

Agriculture Degree having minimum of 4 years experience in that class.

You are accordingly requested kindly to notify above posts for being filled up on direct recruitment basis. However, you may also kindly give a

waiting list of about 15 persons or so to obviate the requirement of further reference to Public Service Commission for such vacancies as may arise

within one year period." (Emphasis supplied)

6. It is the case of the appellants that it is incorrect to say that only 34 vacancies were notified. As a matter of fact, other vacancies which were to

arise within a period of one year were also referred. It is submitted that it is not necessary to mention the precise number of vacancies in the

Notification issued by the Public Service Commission. As a matter of fact, the submission made is that number of vacancies are not required to be

mentioned in the notification issued by the Public Service Commission. For this reliance is being placed on a decision of the Supreme Court of

India reported as Madan Lal and others v. State of J&K and others, 1995(2) SCT 880 (SC) : 1995(3) SCC 486 . Particular reliance is being

placed on para 23 of the judgment. Relevant part of para 23 is being reproduced below :

23. It is easy to visualise that if requisition is for 11 vacancies and the results in the initiation of recruitment process by way of advertisement,

whether the advertisement mentions filling up of 11 vacancies or not the prospective candidates can easily find out from the office of the

Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to

compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete.

It is accordingly submitted that number of vacancies which are notified to the Commission or which are to be filled would depend upon the letter of

reference. It is submitted that when the Government letter reproduced above is taken note of, then it becomes apparent that the Government was

well aware of the fact that some more posts were likely to become available and it was precisely for this reason in the letter dated 12.10.1998 it

was mentioned that with a view to obviate making of further reference to the Commission, a waiting list be prepared. It is further case of the

appellants that the Public Service Commission vide Notification dated 12.7.1989

recommended 68 candidates for appointment. The recommendation so made has been placed on the record of the appeal by way of Annexure 'D'. The Public Service Commission in para 2 of the letter clearly stated that candidates figuring from S. Nos. 1 to 34 are recommended for appointment against the available posts and candidates from S. Nos. 35 to 68 are being recommended for appointment against the posts that would become available during the course of one year from the date these recommendations are communicated to the Government. This letter reads as under :

The Commissioner,
and Secretary to Government,
Agricultural and Rural Development Department,
Srinagar.

Subject : Selection of candidates for the posts of Agriculture Assistants/
Agriculture Extension Officer.

Madam,

The Agriculture and Rural Development Department, vide letter No. Agri E/86/409 dated 12.10.1988 referred 34 posts of Agriculture

Assistants/Agriculture Extension Officers to the Public Service Commission for selection of suitable candidates. Accordingly notification No.

11PSC of 1988 dated 18.10.1988 was issued by the Public Service Commission inviting applications from eligible candidates. In response to the

above notification 841 candidates applied for the posts out of which only 772 candidates were found eligible to apply for the posts and were called

for the interview. Subsequently two more candidates viz. Shri Gian Singh and Shri Abdul Rashid Chowhan whose applications were rejected by

the Commission had to be provisionally interviewed at their own risk and responsibility as per the directions of the Hon'ble High Court. However,

only 716 candidates appeared at the interview which was conducted from 8th April, 1989 to 22nd April, 1989 and 2nd June to 21st June, 1989

at Srinagar and from 1st April to 5th April 1989 and 13th May to 23rd May 1989 at Jammu with the assistance of Dr. J.S. Sahni, Retired

Professor Punjab Agriculture University, Ludhiana.

2. On the basis of over all assessment of performance at the interview, academic

qualifications, experience and other relevant factors the following

68 candidates were found suitable and appointment against the posts in order of merit indicate below:

x x x x x x x x x x x x

The candidates from serial Nos. 1 to 34 (Thirty four in all) are recommended for appointment against the available posts and the candidates from

serial 35 to 68 (thirty four only) are recommended for appointment against the posts that may become available during the course of one year from

the date these recommendations are communicated to the Government.
(Emphasis supplied)

3. Ten scheduled caste candidates had applied for the posts out of which 9 appeared at the interview. None of them figures in the above merit list

but on the basis of relaxed standards the following six scheduled casts candidates in order of their inter se merit are also recommended to be

appointed at their appropriate roster points maintained by the Administrative Department in the available vacancies or those likely to arise during

the course of one year as the case may be :

x x x x x x x x x x

6. These recommendations are valid for a period of one year from the date of communication to the Administrative Department.

7. It is requested that copy of the Government Order that may be issued on the basis of these recommendations may please be duplicated to the

undersigned for record and reference.

It is accordingly submitted that if the recommendation made by the Public Service Commission is strictly take note of then the names of 34

candidates were recommended against clear vacancies and names of 34 candidates were recommended against the vacancies which were to arise

within a period of one year.

7. Another factor which is being projected is that before the expiry of the waiting list, the State Government addressed a communication to the

State Commission. This was done on 25.10.1989. In this letter, it was mentioned that on reassessing the actual number of vacancies, it had been

found that Government can accommodate 12 persons in the Horticulture Department against the posts of Horticulture Assistants. It was also stated

that the qualification for appointment to the said post of Horticulture Assistant is the same as for Agriculture Assistant i.e. graduation in Agriculture

Science. Further request was made vide letter No. AgriHorti84/83GNL issued on 21.11.1989. Copy of this letter has been placed on the record

as Annexure 'F'. In this it was mentioned that concurrence be accorded to the utilisation of the waiting list of candidates selected by the

Commission for the posts of Agriculture Extension Officers and for the Post of Horticultures Assistants. The two communications which were

addressed by the Government were taken note of by the Public Service Commission. The Commission vide its letter PSCDR Agri/17/89 issued on

25.10.1989 informed the Government that the matter regarding which information has been sought by the Commission is a matter on which

Administrative Department itself can allocate the selectees to various wings of the Department. The communication addressed in this regard is

annexure 'G', with the memo of appeal. For facility of reference, this is being reproduced below :

Kindly refer to your letter No. AgriE/89H, dated 25.10.1989 regarding the subject cited above. In this connection I am to say that it is for the

Administrative Department itself to allocate the selectees to various wings of the department against posts for which similar qualifications viz. B.Sc.

Agriculture are prescribed in the relevant recruitment rules.

It was in this manner 10 more candidates came to be appointed in the Horticulture Department. The net position is that before 22.7.1990 i.e.

before the expiry of one year period, 52 candidates in all came to be appointed. 42 candidates were appointed vide Government order No.

587Agri of 1989 issued on 23.8.1989 and ten more candidates came to be appointed later on in the Horticulture Department.

8. The further facts as projected by the appellants are that while this process was going on, some more posts became available between

12.7.1989 and 12.7.1990. Somehow or the other the relevant file got misplaced. This was traced only on 21.12.1990. It is in this situation the

Government addressed another communication to the Commission. This is dated 21.12.1990. This has been placed on the record as Annexure

'H'. For facility of reference, this letter is also being reproduced below :

I am directed to refer to your letter No. PSCDRAgri/40/88 dated 11.12.1990

whereunder duplicate copy of the panel of the candidates

recommended for appointment of Agriculture Assistants/Agriculture Ext. Officers was made available to this department. In this connection it is

brought to your kind notice that we have utilized the panel of selected candidates to the extent of 52 candidates (including five scheduled castes)

who have been appointed as Agriculture Assistants/Agriculture Extension Officers/Horticulture Assistants.

Later on, well before the expiry of the period of validity of the panel some more vacancies fell vacant and a proposal was moved to fill these out of

the remaining empanelled candidates. But before the proposal could be finalised the department file was somewhere misplaced and is untraceable

till date.

In order to use the remaining panel to fill up the existing vacancies to meet our urgent requirement, we could not move the proposal for extension of

life of the panel well in time due to the loss of the file and strike of employees in the valley.

It may be appreciated that we are having about fifty vacancies of Agriculture Assistants/Agriculture Extension Officers at present out of which

some are required to be filled very urgently to fulfil our commitment of executing some World Bank aided Programmes. Since fresh selection is

likely to take some time, it is proposed that the said panel may be allowed to be utilised in full to meet our urgent requirement upto end of March,

1991 as a very exceptional case so that the remaining candidates out of the panel could be observed against the available vacancies.

It is requested that the decision of the Commission may very kindly be communicated as early as possible.

9. It appears that the Commission at the first instance did not agree to the extension of life of the select panel. This led to another letter being

written by the State Government to the Commission. For facility of reference this letter is being reproduced below :

Kindly refer to this office letter No. AgriE.43.88II dated 21.12.1990 and the Commission's Letter No. PSCDRAgri40.88 dated 15.1.1991

wherein our request for grant of extension till end of March 1991 to the panel of Agriculture Assistants/Agriculture Extension Officers selected in

July 1989 was turned down by the Commission.

The matter was examined and discussed with H.E. the Governor and Chief Secretary who have desired that the Public Service Commission be

requested to reconsider the matter in view of the peculiar circumstances, of the case in which the candidates are not at all to be blamed, I would,

therefore, request you to kindly extend the validity of the panel upto August ending 1991 to enable the selected candidates to be appointed.

This has also preference to the discussion I had with you on the subject sometime back.

In view of the circumstances which were brought to the notice of the Commission, the Commission agreed and sent a further communication dated

10.7.1991 whereby the life of the panel was extended upto the end of August 1990. It was after the life of panel was extended the appellants

came to be appointed.

10. The case of the appellants is :

(i) that the requirement to notify the vacancies is not mandatory.

(ii) 52 candidates came to be appointed within one year.

(iii) that the Commission was requested to extend the life of panel. This was done on 21.12.1990. It could not be done earlier because the file in

this connection was not available. Even though the Commission initially disagreed but later on the Commission agreed to extend the life of the select

panel by sending a communication which has been noticed above.

(iv) that the appellants submit that the judgment on which reliance has been placed would not be applicable. It is submitted that in Ashok Kumar's

case Rules were framed under Article 309 of the Constitution. The life of the panel was fixed under the Rules so framed. It is submitted that so far

as J&K Public Service Commission Conduct of Business Rules are concerned these have not been framed under Article 309 of the Constitution :

Therefore, it is urged that these cannot govern the subject of service conditions. It is also submitted that there was no necessity to refer a specific

number of posts to the Commission and in any case, the Commission acted in accordance with the Rules of Business in extending the validity of the

panel. With a view to support this, it is submitted that if the original requisition is taken note of then not only 34 vacancies but also the vacancies

which were to arise within one year, were to be taken note of. The Government had indicated that 15 vacancies are likely to arise. This, however,

was not the final expression of opinion. What was required to be taken note of was the number of vacancies which had arisen in that particular

year. The Commission having recommended 68 candidates under Open Merit Category and six candidates under reserved category i.e. 74

candidates in all, left leverage with the Government to make appointments within one year. So far as 34 posts are concerned, these were filled.

Further eight candidates also came to be appointed. Thereafter, ten more candidates were appointed in the Horticulture Department. This was

done with the consent of the Commission. So the argument urged is that all the vacancies regarding which appointments came to be made, became

available within one year and this aspect of the matter was required to be taken note of. It is in these premises submitted that the judgment of the

learned Single Judge cannot be sustained.

11. The appellants want this court to examine :

(i) whether the Government had referred only a specific number of posts or all those vacancies which were to become available within one year;

(ii) whether the Commission by extending the life of the panel had in any manner acted in breach of any statutory rule;

(iii) as to how any prejudice was caused to respondents 4 to 29 i.e., the writ petitioners who took part in the process of selection and were unable

to make the grade.

These aspects be examined.

A perusal of letter dated 12th October 1988 makes it apparent that 34 posts of Agriculture Assistants/Agriculture Extension Officers were duly

notified in express terms. The concluding part of the letter again makes mention of the fact that atleast a waiting list of 15 persons or so be

furnished so that all those vacancies which are likely to arise within one year can also be filled. If the appellants were adjusted against the vacancies

which arose within one year, then it can safely be concluded that the Commission made its recommendation in terms of the requisition sent by the

State Government. It is not in dispute that so far as 34 posts are concerned, the State Government immediately made the appointments. In addition

to this, eight more appointments were made. This was out of the waiting list. Still later, the Government made adjustment of ten more candidates

because the vacancies existed in the Horticulture Department. This was again

done within the consent of the Commission. Thus at the initial stage

52 candidates were adjusted. Later on 22 more appointments were made. One candidate namely Sushil Kumar did not join. His appointment was

cancelled. In his place another candidate came to be appointed. If this be the situation then all the vacancies to which the appointments were made

had become available between 12th July, 1989 and 12th July, 1990. As in the letter dated 12th October, 1988, it was specifically mentioned that

recommendations should be made in a manner that all the vacancies which may arise in one year may be filled, therefore, to say that only limited

number of vacancies were notified to the Commission would be an argument which cannot be accepted as it is not based on facts.

12. The second question as to whether the Commission had the jurisdiction to extend life of the panel, be also examined.

Rule 57 of the Jammu and Kashmir Public Service Commission Business and Procedure Rules of 1980 lays down that the recommendations shall

be valid for a period of one year from the date they are communicated to the Government. The validity period of one year can, however, be

extended for a further period of six months on specific request of the Government. If the request for such extension is made before the expiry of

the validity of the panel.

The above rule visualises :

(i) that the recommendation is to be valid for one year.

(ii) that the validity of one year can be extended for a period of six months and this can be done if a specific request is made by the Government.

(iii) that if a request is to be made then that has to be made before the expiry of the period of validity of recommendation.

This rule has been relied upon for raising a contention that the appointments are void ab initio. Particular reference is being made to the decision

given in Ashok Kumar and others v. Chairman, Banking Service Recruitment Board and others, AIR 1996 SC 975. Particular reliance is being

placed on paragraph 5 of the judgment. This is being reproduced below :

5. Article 14 read with Article 16(1) of the Constitution enshrine fundamental right to every citizen to claim consideration for appointment to a

post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be

considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards though the vacancies had arisen subsequently without being notified for recruitment is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and expected vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection.

If what is said by the Supreme Court in the aforesaid judgment is analysed, it becomes apparent that the aforementioned decision lays down :

- (i) that the vacant posts arising or expected should be notified.
- (ii) applications should be invited from all eligible candidates.
- (iii) recruitment in excess of the notified vacancies would amount to denial and deprivation of constitutional rights under Article 14 read with Art 16 of the Constitution of India.

It be seen that in the above case, the appointments were not nullified but the observations was made that what is said in the judgment should be given prospective effect. It was categorically observed that since the appointments have already been made and none has been impleaded we are not inclined to interfere with this matter adversely affecting their appointments.

13. No doubt, in the present case, the persons likely to be affected have been arrayed as respondents but another factor which weighed with the

Supreme Court that the appointments have already been made is a matter which cannot be lightly brushed aside. Apart from this in the

aforesaid decision, observations were made that by filling the vacancies which are not notified there comes into existence a situation which

would be in breach of Articles 14 and 16 of the Constitution. This is not the situation in the present case. This is because the respondentwrit

petitioners also took part in the process of the selection. Therefore, the question

of breach of Articles 14 and 16 of the Constitution would not arise in this case. Again the posts in question were no doubt quantified at 34 in the beginning of the letter noticed above but in the last portion of the letter, it was categorically mentioned that the recommendations should be made in such a manner that a care should be taken and appointments could be made for all those vacancies which may arise in the year in question. It is not the case of the respondents writ petitioners that these vacancies did not arise in one year. We are accordingly of the view that the ratio of decision given in Ashok Kumar's case (*supra*) would not be attracted to the facts of this case.

14. The scope of R. 57 of the Jammu and Kashmir Public Service Commission Business and Procedure Rules of 1980 be now examined.

As per the learned Counsel appearing for the appellants these rules do not have the same statutory force as is the case where Rules are framed

under Article 309 of the Constitution or under corresponding provision in the State of Jammu and Kashmir i.e. Section 124. What is sought to be

urged is that when the Supreme Court of India in the case of *State of Bihar v. Md. Kalimuddin and others*, 1996(2) SCT 515 (SC) : AIR 1996

SC 1145, laid down the law to the effect that the life of the duration of the panel has to be as mentioned in the rules, then the Rules which were

being referred to were the rules framed under Article 309 of the corresponding Section 124 of the Constitution of Jammu and Kashmir. The rules

framed by the Public Service Commission would not have the effect of governing the service conditions of the appellants and also the

respondentwrit petitioners. The learned Counsel for the appellants elaborates that the rules in question have been framed by the Commission with a

view to regulate its own procedure and to that extent it would not govern the service conditions. A stipulation in this regard as such would not have

a mandatory effect. In this regard, reference is being made to one of the earliest decisions of the Supreme Court reported as AIR 1957 SC 912,

State of U.P. v. Monbodhan Lal. In the above case what was being interpreted was Article 320 of the Constitution of India. It was held that

notwithstanding the fact the word used is, shall even (*sic*) the recommendations of the Commission shall not be binding. What is urged is that the

recommendations made by the Commission are not binding on the Government

then the recommendations made in pursuance of the Rules of Business would equally be not of binding nature. There is some merit in the submission. The stipulation in the rules of Business framed by the Commission would not have mandatory effect and if some steps are taken which are strictly not in accordance with the rules of Business, then the ultimate decision of the State Government would not be liable to be set aside. The scope of these rules prima facie is different from the rules which are framed under Article 309. On this aspect no final opinion is expressed. Even if this argument is left as it is, even then the State Government had validly contended that the life of the panel was rightly extended. The fact that the file was misplaced and was traced later on was one of the factors which had been pointed out by the State. In this regard, it would be pertinent to make mention of the fact that the State Government had itself addressed a Communication. This was on 25th October, 1989. Both the letters were considered by the Commission. The Commission informed that it is for the Government to allocate the selectees to the various wings of the department. It was in this manner ten more vacancies came to be filled in the Horticulture Department. As such before 12th July, 1990 i.e., before the expiry of one year period, 52 candidates came to be appointed. While this process was on some more vacancies had become available between 12th July, 1989 to 12th July, 1990. The relevant file which was misplaced was traced only on 21st December, 1990. It was in these circumstances a request was made for extending the time. At first the Commission did not agree to the extension of the life of the panel but later on acceded to the request of the State Government. It was in this manner, the appellants came to be appointed. If this be the position then it cannot be said that the appointment of appellants was not in accordance with the law. We are accordingly of the view :

- (i) that in the requisition which was sent to the Commission, it was categorically mentioned that besides specific number of posts recommendations should be made in a manner which may take care of the vacancies which are likely to arise in that year.
- (ii) that 52 appointments were made within one year and the remaining appointments were made later on.
- (iii) that a specific request was made for extension of time. This was duly

acceded to by the Commission.

(iv) that the ratio of decision given in Ashok Kumar's case would not be attracted because in the above case the challenge was being made by

those candidates who did not appear in the interview. In the present case challenge has been made by those persons who had duly competed

alongwith the selectees. In this situation the question of breach of Articles 14 and 16 of the Constitution would not arise.

(v) that even if Ashok Kumar's case (supra) is made applicable even then it would not effect the claims of the appellants. This is because the

Supreme Court of India expressed an opinion that the judgment would have prospective effect only. Clear observations were made that the

existing and expected vacancies should be got advertised and published and filled thereafter. In the present case appointments made earlier to the

judgment referred to above and, therefore, this judgment which was given prospective effect would not be applicable to the fact of this case.

(vi) that in the present case it was categorically mentioned that the recommendation should be made for all those vacancies which are likely to arise

within a period of one year. It is not the case of the respondentwrit petitioners that vacancies did not arise within one year.

In view of the above, we are of the opinion that the case of the appellants was clearly distinguishable. Judgment given in Ashok Kumar's case is not

attracted to the facts of this case. The fact that 68 candidates were found suitable from the general category and 26 candidates were found suitable

from the reserved category and appointments were made only out of that list is a factor which cannot be ignored.

13. In this regard reference be also made to the decision reported as Virender S. Hooda and others v. State of Haryana and another, 1999(2)

SCT 652 (SC) : 1999(3) SCC 696 . The facts in the above case were as under :

In 1991, the Haryana Public Service Commission advertised 12 posts of Haryana Civil Service (Executive Branch). On completion of selection,

final list was published on 19.6.1992. The appellants did not find place in the merit list against these 12 posts. Their contention however was that

some of the selected candidates did not join and, therefore, the appellants should have been considered against the vacancies so arising, depending

upon the ranking obtained by the State Government in the competitive

examination. They quoted circulars dated 22.3.1957 and 26.5.1972

according to which the vacancies which arise within six months from receipt of recommendation of the Commission should be filled up from the

waiting list maintained by the Commission. These circulars also provided that if additional vacancies occur after the Commission has made

recommendations, such additional vacancies can also be filled up from amongst candidates recommended by the Commission.

14. In the above case, the view taken by the High Court was that administrative instructions cannot be enforced by the appellants and that

vacancies becoming available after initiation of process of recruitment could not be filled. It was urged that this would be looking at the matter from

a narrow and wrong angle. When a policy had been declared by the State qua the manner of filling up the post and that policy is declared in terms

of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules

the respondents ought to follow the same.

15. The above decision also advances the case of the appellants. If on the strength of a circular, vacancies which were to arise could be filled then

in the present case when a letter was issued by the Administrative Department recommending that the recommendations should be made for the

vacancies which were to arise in one year then this aspect cannot be ignored. It is settled law that in the absence of a rule or regulation, the

Executive can in the exercise of executive function take a decision. All that is required is that it should not be contrary to a rule. In the present case,

as indicated above, a decision was taken and the Commission had notified that recommendations should be made for the vacancies which are to

arise within a period of one year. This letter in the shape of executive decision being not contrary to any service Rule, would have the same status

as that of a circular issued by the Government. The ratio of the aforementioned decision also advances the case of the appellants.

16. In view of the above discussions we are of the opinion that the appointments of the appellants cannot be said to be vitiated in any manner.

Respondent-writ petitioners took part in the process of selection and were unsuccessful. At least these writ petitioners cannot contend that in their

case there is breach of Articles 14 and 16 of the Constitution of India. Therefore,

independently of humanitarian approach which was adopted by the Supreme Court of India in case ??H.C. Puttaswamy and others v. Hon'ble Chief Justice of Karnataka High Court Bangalore?? (supra) and independently of the situation prevailing in the valley at the relevant time, appellants appointment deserve to be upheld and these are accordingly upheld. Decision given by the learned Single Judge is reversed. Writ petition shall stand dismissed. It is, however, made clear that nothing prevents the State from taking note of decision given by the Supreme Court of India in H.C. Puttaswamy's case (supra). If the respondentwrit petitioners can be adjusted against the available posts State may consider this aspect of the matter.

17. These appeals are allowed in the manner indicated above.

Appeals allowed.