temporarily promoted him to a higher post, it is precluded from reverting the officer to his substantive post after it has before it the advice of the Public Service Commission in that respect which it considers along with the record of service of the officer. If this was the view it would mean that in cases in which favouritism is intended to be shown and an effort is made to bye-pass the Public Service Commission, the State Government may first just promote an officer temporarily or on officiating basis and then proceed to disregard the advice of the Public Service Commission on the ground that it is at that stage helpless to make a change in its previous order. This I do not take to be the ratio of the decisions of the learned Judges, nor the object underlying the provisions regarding the consultation in such matters of the State Public Service Commission.

In the result this appeal fails and is dismissed, but, in the circumstances of the case, the parties are left to their own costs.

A. N. *Grover, J.*—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and R. S. Narula, JJ.

SAVTANTAR KUMAR MALHOTRA,—*Petitioner.*

versus

THE VICE-CHANCELLOR, PANJAB, UNIVERSITY AND OTHERS,—*Respondents.*

Civil Writ No. 1592 of 1966.

January 31, 1967.

Panjab University Calendar, 1966, *Vol. III—Chapter XV, Rules* 1 *and* 2 *at page* 83—*Proceedings for determination of age of a candidate—Whether* quasi-judicial—*Rule* 2—*Whether capable of being enforced in Court—University—Whether can correct age if case does not fall within any clause of rule* 2.

Held, that the duty which the Panjab University is required to perform under rule 2 of Chapter XV of the University Calendar, Volume III, cannot be called judicial or even *quasi-judicial.* The scope of the matters to be decided by the

University under rule 2 is very limited and is almost mathematical. No elaborate investigation is expected to be held by the University beyond comparing the two alternative dates of bith of a candidate referred to in the relevant part of the rule under which a particular case may fall. No difficulty would arise in a case where the University allows the correction of age. In a case where it declines to do so, it is not giving any finding as to the correct date of birth of a candidate, but merely declining to record a change. In giving its decision under the aforesaid rule, the University does not "declare the right" of a candidate or even his correct age. Nor does the University impose upon the candidate any obligation affecting his rights. It is admittedly open to the candidate to have his correct date of birth adjudicated upon by a competent civil Court. The investigation by the University under rule 2(supra) is not subject to any procedural attributes. The rule does not contemplate the granting of any opportunity of presenting the candidate's case to the Syndicate. Nor does the rule provide any ascertainment of any fact by means of evidence beyond the specific documents mentioned in the rule itself. No question of law is to be decided by the University in coming to a determination on a matter like this. No legal argument can possibly be envisaged in the decision of such questions as are envisaged by Rule 2. The functions of the University under Rule 2 aforesaid are not of a *quasi-judicial* nature, but purely administrative and are, therefore, not amenable to a writ of *certiorari*.

Held, that Rule 2 in Chapter XV of the Panjab University Calendar, 1966, Vol. III dealing with the correction of age in the University certificate is not a statutory regulation and is not capable of being enforced in Court.

Held, that if the case does not fall within any of the clauses of rule 2 aforesaid, the University has no jurisdiction to effect any change in the date of birth recorded in the Higher Secondary Examination certificate of the petitioner and the petitioner has no right to compel the University to do something which is not enjoined on this statutory body by its constitution, even if a writ of mandamus could otherwise issue in such a case.

Case referred by the Hon'ble Mr. Justice P. D. Sharma, to a larger Bench, for decision of the important question of laws involved in the case, on 13th December, 1966, and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, and the Hon'ble Mr. Justice R. S. Narula, on 31st January, 1967.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari *or any other appropriate writ, order or direction be issued quashing the order of the respondent and the respondents be directed to correct the date of birth from 28th October, 1950 to 28th October, 1949.*

N. D. Bali, BAL RAJ Trikha, N. S. D. Bahl, and R. P. Bali, Advocates, for the Petitioner.

H. R. Sodhi, Senior Advocate, with Dr. A. S. Anand, Advocate, for the Respondents.

Savtantar Kumar Malhotra *v.* The Vice-Chancellor, Panjab, University, etc. (Narula, J.)

ORDER OF THE DIVISION BENCH

The following judgment of Court was delivered by—

Narula, J.—The circumstances in which the writ petition of Savtantar Kumar Malhotra, minor son of Shanti Lal Malhotra (hereinafter referred to as the petitioner), impugning the order of the Panjab University, refusing to effect a change in his date of birth as recorded in his Higher Secondary examination certificate, has been referred to a larger Bench by P. D. Sharma, J. are these.

The petitioner claims to have been born at Jagadhri on October 28, 1949. The petitioner himself being minor he has filed this writ petition through his father as the next friend. He has attached to the petition a copy of the extract from the birth register of the Municipal Committee, Jagadhri, showing the birth of a son to "Lala Shanti Lal, son of Lala Ram Rang" on October 28, 1949. The information purports to have been sent to the municipal authorities on the next day. At the time of admission of the petitioner into the school, the date of birth was given as October 28, 1950, instead of 1949, and this is alleged to have happened on account of some mistake. The fact remains that the petitioner passed even the Middle School examination on the basis of his age recorded in his earlier school registers. The petitioner has also claimed that his grandfather wrote postcard (Annexure A-1) dated October 29, 1949, to petitioner's paternal uncle Ram Lal informing him of the birth of a son to petitioner's father. Petitioner's admission form had to be submitted to the Panjab University for the Higher Secondary examination (Science Group), which was to be held in February, 1965, by the D.A.V. Multipurpose Higher Secondary School, Amritsar, where the petitioner was studying. This was to be done before a particular date in November, 1964. On October 20, 1964, the petitioner's father claims to have written a letter (Annexure 'D') to the District Education Officer, Rohtak, to correct the date of birth of the petitioner, so as to ante-date the previously recorded date by one year, as it was alleged that the error had been detected during the course of completion of the admission form of the petitioner. Though the age of the petitioner recorded in the certificate for the Middle Standard examination for boys and girls held in 1961-62, issued on the 22nd of March 1962, was recorded as 28th October, 1950, correction was claimed on the basis of the municipal birth register entry, on November 10, 1964 when the petitioner's admission form to the Panjab University was submitted, his date of birth was again

described as of 1950. The learned counsel for the petitioner states that this was done deliberately as the school authorities would not have forwarded the admission form to the University unless the date of birth mentioned therein tallied with the date recorded in the Middle School examination certificate and with the entries in the school records. In the meantime, the Director of Public Instruction, Punjab, issued directions contained in letter, dated November 13; 1964, to the Circle Education Officers (Annexure 'F') pointing out that the Panjab University was not accepting the correction made in the date of birth of students who had passed the University examination before the correction was made as the University had to follow its own rules; and that in those circumstances it had been decided that though all cases for correction of date of birth could be decided according to the existing departmental rules and instructions till the students passed the University examination, all cases which were not so decided till after the candidates had passed the University examination were to be decided by the Panjab University, and should be referred to them.

The petitioner passed the Higher Secondary Examination of the Panjab University creditably, and was awarded the certificate, dated July 9, 1965 (Annexure 'B') showing his 1950 date of birth according to the entry in the admission form. The petitioner then applied for admission to the first year class of the degree course of the Delhi College of Engineering, which is run by the University of Delhi. According to the relevant rules (Annexure C—1), no person is qualified for admission to the first year class of the said course unless he is sixteen years of age before the 1st day of October in the year in which he seeks admission. It was, therefore; obvious that if the age of the petitioner as recorded in his Higher Secondary School examination certificate was taken into account, the petitioner could not be admitted in the Delhi College, but if his age could be enhanced by a year by effecting a change in his date of birth the age bar contained in the above-mentioned rule could not stand in his way to the admission in question. The petitioner was otherwise selected on merits for admission and on the representation made about the case for the correction of his date of birth being pending, the petitioner was allowed provisional admission subject to his furnishing proof of his age as declared by him. It is at that stage that the petitioner's father seems to have pressed the issue with the District Education Officer, Rohtak. It, however, appears from letter, dated October 19, 1965 (Annexure 'E') from the District Education Officer, Rohtak to the Circle Education Officer, Ambala Circle, that various records of

the relevant period had been lost including the application of the petitioner's father. A copy of the said letter was forwarded to the petitioner's father desiring him to submit a fresh petition to enable the District Education Officer to process the matter further. The petitioner's father claims to have sent the requisite fresh application to the District Education Officer (Annexure 'H') on November 15, 1965. In view of the directions which had in the meantime been received by the District Education Officer from the Director of Public Instruction (Annexure 'F'), and in view of the fact that the petitioner had in the meantime passed the Higher Secondary examination of the Panjab University, the District Education Officer forwarded the application of petitioner's father to the Registrar of the Panjab University with the former's letter, dated December 24, 1965 (Annexure 'I'), along with the birth certificate, two affidavits of petitioner's father, two affidavits of other persons, the Higher Secondary examination certificate, and the Middle Standard examination certificate of the petitioner, with the request to accord necessary sanction for effecting the change in the date of birth of the petitioner. The Registrar of the Panjab University in his memorandum, dated March 30, 1966 (Annexure 'J'), informed the petitioner's father that the application for correction in date of birth could be entertained according to the relevant rules of the University within one year from the date of passing the Higher Secondary examination, that the application in respect of the petitioner was time-barred, but that the Syndicate had authorised the Vice-Chancellor to condone the delay in the submission of such applications, if he could be satisfied that the delay was due to a *bona fide* mistake. The petitioner's father was, therefore advised to appeal to the Vice-Chancellor to condone the delay, and also to submit documentary proof on the basis of which the correction was claimed. The prescribed application form was provided to the petitioner's father with the said letter. Certain correspondence appears to have been exchanged thereafter between the petitioner's father on the one hand and the University authorities on the other. Ultimately with letter, dated April 9, 1966 (Annexure 'K') the petitioner's father submitted the requisite application in the prescribed form along with the original Higher Secondary examination certificate, and pointed out in the said letter that this matter had been lingering "since October, 1965". The matter was requested to be treated as urgent as the amended certificate was required to be produced before the Delhi Engineering Institute. In letter, dated May 3, 1966 (Annexure 'L'), the University wrote back for being furnished with, (a) school leaving certificate of the petitioner from Primary

School, Sirsa, (b) municipal birth certificate, and (c) Middle Standard examination certificate, of the petitioner. The petitioner's father appears to have informed the University that the requisite documents had already been forwarded to the University by the District Education Officer, Rohtak. Thereupon the University wrote letter, dated June 2, 1966 (Annexure L-1) asking for particulars of the communication of the District Education Officer as it was the function of the applicant to submit documentary proof which was required by the University. On June 7, 1966, the petitioner's father wrote a demi-official letter to the Vice-Chancellor of the University (Annexure 'M') wherein he gave history of the previous correspondence and proceedings and requested the Vice-Chancellor to direct the Registrar to look into the matter and to finalise it without any further loss of time. The particulars of the District Education Officer's communication were also given in the said letter. Later on, the petitioner's father handed over to the Assistant Registrar of the University, the alleged original postcard dated October 29, 1949 (Annexure A-1). The Vice-Chancellor promptly replied to the petitioner's father on June 25/27, 1966 (Annexure 'N') that he had gone through the case and that the municipal birth certificate submitted by the petitioner would not help as the name of the child had not been indicated therein, and that the affidavits were also not admissible (presumably referring to the University rules). The Vice-Chancellor further stated in his said letter that it would be possible to do something in the case if the petitioner could establish that his date of birth in the primary school, which the petitioner joined for the first time in the infant class, was the same as was now claimed by the petitioner's father. It was, therefore, requested that the name of the primary school where the petitioner was first admitted may be indicated, failing which it would not be possible to accede to the request of the petitioner's father. By letter, dated May 17, 1966 (Annexure R—4), petitioner's father informed the Registrar of the University as below :—

> "As to the school leaving certificate from Primary School, Sirsa, since it is more than a decade ago that the boy passed from that school it is very difficult to recollect even the name of the school where he studied. As such it is not possible to furnish school leaving certificate from Primary School, Sirsa."

On July 4, last year, the petitioner's father sent a demi-official reply to the Vice-Chancellor wherein he mentioned for the first time that only one son had been born to him and that also at Jagadhri

and that as no other son had been born to him, the absence of the name of the child in the birth entry was not relevant. For the first time reference was made to the postcard, dated October 29, 1949 (Annexure A-1), in this letter of the petitioner's father, dated July 4, 1966 (Annexure 'Q'). In the meantime, the Delhi University informed the petitioner's father by letter dated July 11, 1966 (Annexure 'P'), that the Vice-Chancellor of that University had directed that proof of correct date of birth of the petitioner, should be produced before the 15th day of that month, and that, therefore, the needful may be done in that respect and the fees in respect of the petitioner would be accepted on July 16, 1966, on the production of the requisite proof.

In his letter, dated July 15, 1966 (Annexure 'R'), the petitioner's father requested the Principal of the Delhi College of Engineering to admit the petitioner provisionally at the applicant's risk, and to extend the time within which the date of birh could be got corrected up to July 31, 1966. In reply the Deputy Administration Officer of the Delhi College of Engineering informed the petitioner's father by letter, dated July 21, 1966 (Annexure 'S'), that the petitioner had been provisionally admitted against the reserved seat for the dependants of ex-Servicemen in Delhi, subject to the condition that he would produce definite evidence from the Panjab University accepting the petitioner's request for the change in the date of his birth to October 28, 1949, by the 31st of July, 1966 failing which the admission would be cancelled and the amount forefieited. On that condition he was asked to deposit the requisite admission fee, etc., of the petitioner. After making the requisite deposit of fees, etc., on July 22, 1966 (receipt Annexure 'T'), the petitioner filed this writ petition on July 23, 1966, which was admitted by the Motion Bench (Mehar Singh, C.J. and Mahajan, J.) on July 25, 1966. On July 27, 1966, the petitioner's father got the name of the petitioner entered in the municipal birth register of Jagadhri under an order of the Executive Officer of the municipality concerned. He has produced a copy of the amended entry as Annexure 'U' to the writ petition. During the pendency of the writ petition and after its admission, the petitioner's father wrote a further demi-official letter dated July 28, 1966, to the Vice-Chancellor of the Panjab University (Annexure 'V') wherein he stated that he had received intimation of the case in question having been fixed before the meeting of the Standing Committee for 31st of July, 1966. He referred to the custom in the Hindu families of not naming a newly born child within the

first thirteen days and informed the Vice-Chancellor that the name of the child had since been got introduced into the birth register. He forwarded with the letter, a copy of the amended birth entry. Interview was also claimed to explain the case personally in the meeting of the Standing Committee. In reply, the Vice-Chancellor sent telegram, dated July 30, 1966 (Annexure 'W'), informing the petitioner's father that the meeting was fixed for August 2. The petitioner's father then sent letter, dated July 31, 1966 (Annexure 'X') wherein he expressed his inability to appear before the Committee on account of preoccupation and intimated to the Vice-Chancellor that he had authorised Shri N. S. Dass Bahl, Advocate, to represent his case before the Vice-Chancellor or the Committee.

When the writ petition came up before Kaushal, J. (as he then was), on August 1, 1966, its hearing was adjourned to August 9, at the request of the counsel for the University, as its return was not yet ready. On August 2, 1966, the petitioner's Advocate passed on to the Registrar of the University, the letter of petitioner's father (Annexure 'X'), and the two affidavits dated July 27, 1966, of the two Jagadhri neighbours. His request for a personal hearing was not, however, acceded to. In the meantime, the petitioner had also filed a writ petition (C.W. 588-D of 1966) in the Circuit Bench of this Court at Delhi. He had submitted Civil Miscellaneous 2661-D of 1966, in the said case for restraining the Vice-Chancellor of the Delhi University and the Principal of the Delhi College of Engineering from cancelling the provisional admission granted to the petitioner till the disposal of this case (C.W. 1592 of 1966). On August 2, 1966, the petitioner obtained interim order from the Circuit Bench (copy Annexure Z-1) restraining the Principal of the Delhi College from cancelling the provisional admission granted to the petitioner till the decision of Civil Writ 1592 of 1966 (this case), and directing the Principal to allow the petitioner to continue his studies in the Delhi College of Engineering till such time.

The decision which was arrived at by the Standing Committee on August 2. 1966. was conveyed to the petitioner's father by the Registrar's letter, dated August 22, 1966 (Annexure 'Y') wherein he was informed that the application for correction of petitioner's age had been rejected. On September 8, 1966, the petitioner submitted an application for amendment of this writ petition so as to bring on record the above-said decision of the University and to impugne the same. The application was allowed (by order of Shamsher Bahadur, J.) on October 25, 1966, and in pursuance of the said permission this

amended petition was filed by the petitioner on November 1, 1966. The Vice-Chancellor filed his affidavit and formal written statement, dated August 17, 1966, accompanied by various documents including Annexure R-4, to which reference has already been made. The University filed a subsequent written statement, dated December 12, 1966, in reply to the amended petition. The University has pleaded *inter alia,* that the petitioner has no legal right to claim from the University that his date of birth as given by himself earlier, should be altered according to his desire, that the remedy of the petitioner is to file a suit in a civil Court to get the disputed question of fact adjudicated upon, that the University is not responsible for the date of birth of the petitioner having been shown as October 28, 1950, in the Higher Secondary examination certificate, as the said date had been supplied by the petitioner himself at the time of filing his admission form in the said examination and the requisite information in the said form including the petitioner's date of birth, had been sworn to by the petitioner, and certified by the Principal of his school, that the only application in the prescribed form which was received by the University for changing the date of birth of the petitioner was received with petitioner's father's letter, dated April 9, 1966, that after the petitioner had passed the Higher Secondary examination the University alone was competent to decide the question relating to the change of his date of birth, that the syndicate of the respondent University has set up a Committee consisting of the Director of Public Instruction, Punjab, the Principal of the Law College (now Head of the Panjab University Law Department), and the Registrar to decide cases of correction of dates of birth, and that such cases are decided by the University according to its rules. It has been added in the return of the University that all it has to consider is whether in the light of the rules change in the date of birth as applied for by any particular person can be allowed or not, and that the order of the University declining to effect the desired change in the petitioner's date of birth is an administrative order of the statutory corporation and is not justiciable in a writ petition.

When the case came up for final hearing before P. D. Sharma, J., on December 13, 1966, the learned Judge observed that the question whether the impugned order of the Syndicate was of a quasi-judicial nature or not and the question whether the provisions of the relevant rules in regard to the correction of date of birth of candidates are *ultra vires* or not, are of sufficient importance and are likely to arise in many more cases and, therefore, directed that the case may

be decided by a larger Bench in the very first instance. In pursuance of the said direction my Lord the Chief Justice has referred this case to us for hearing and disposal .

The relevant University rules (Annexure 'O') to which reference has been made by both sides, are printed in Chapter XV of the Panjab University Calendar, 1966, Volume III, at page 83, Rules 1 and 2 alone are relevant for deciding this case and the same are, therefore, quoted below:—

"1. Application for correction in date of birth shall be entertained if made on a prescribed form along with a fee of Rs. 15 within one year of the applicant's passing the Matriculation or Higher Secondary examination; thereafter no application shall be entertained under any circumstances whatsoever. Fee once received shall not be refunded even if the application is rejected or withdrawn by the applicant.

(2) Application for correction in date of birth shall be entertained only on the following grounds:

(a) That the date of birth given in the Matriculation or Higher Secondary certificate does not correspond with that given in the candidate's application for admission to the Matriculation or Higher Secondary examination. (Such a candidate will not be required to pay any fee.)

(b) That the date of birth given in the application for admission for the Matriculation or Higher Secondary Examination does not correspond with that given in the register of admission and withdrawal of the school through which the application was made. or, in the case of private candidate, with that of relevant register of the school, if any, which he last attended;

(c) That there has been a clerical mistake, i.e. the date of birth given in the Matriculation or Higher Secondary certificate does not correspond with that given in the Admission Register of the school where the applicant joined for the first time in the infant class (or the earliest available record) and the mistake has subsequently occurred in transferring age or date of birth from one register to another.

(d) The following documents will also be considered for correction in date of birth:—

(i) Entries made in the Kindred Rolls in case of the children of the Military Personnel subsequent to their joining the Military Service.

(ii) Municipal Birth Certificate showing applicants' names therein."

The learned counsel for the petitioner has firstly contended that the proceedings of the University Syndicate for determination of age of a candidate, are necessarily quasi-judicial. In support of this proposition, he has firstly relied on a Single Bench judgment of the Madras High Court in *B. Ramamurthy, minor by next friend and father B. S. Chetty* v. *Director of Public Instruction, Madras* (1). A writ of *mandamus* under section 45 of the Specific Relief Act was no doubt granted in that case by the Madras High Court in pre-Constitution days, ordering the Director of Public Instruction, Madras, to consider and determine the application of the candidate in question for alteration of his date of birth in accordance with the spirit of the rules framed by the Madras Government and the departmental orders issued by it. The question of the nature of the proceedings for determination of age did not come up for consideration before Bell, J., who decided *B. Ramamurthy's* petition. In fact no such question could arise under section 45 of the Specific Relief Act where only a writ in the nature of *mandamus* could issue. The judgment of the Madras High Court was based on the true scope and correct interpretation of the rules framed by the Government of Madras and of a Government order, dated June 23, 1941, which had not been complied with by the Director of Public Instruction, Madras, while rejecting the application of B. Ramamurthy. On facts it was found by the High Court that incorrect age of the candidate had in the beginning been furnished by the ignorant mother of the candidate, who had gone to get the child admitted at an outstation school. I do not think the judgment of the Madras High Court can be of any assistance to the petitioner either to support him in the proposition raised by him or otherwise on the facts of the present case.

Counsel has then placed reliance on the Full Bench judgment of the Allahabad High Court in *Gajadhar Prasad Misra* v. *The Vice-Chancellor of the University of Allahabad and others* (2), wherein it

(1) A.I.R. 1944 Mad. 187.

(2) A.I.R. 1966 All. 477.

was held, that the Allahabad University Act, the statutes, the Ordinances and the Regulations framed thereunder did not expressly provide for calling for an explanation and hearing a student before inflicting punishment upon him nor did they provide the procedure required to be followed by the Vice-Chancellor in such matters, that in deciding such matter the Vice-Chancellor could not avoid objective determination of certain facts and that considering the serious consequences to the student and the serious nature of the misconduct, which the Vice-Chancellor may find in some cases, it must be held that the Vice-Chancellor is required to act judicially. After the authoritative pronouncement of the Supreme Court in *Board of High School and Intermediate Education, U.P., Allahabad and another* v. *Bagleshwar Prasad and another* (3), there is no difficulty at all in holding that the quasi-criminal proceedings for determining the guilt or otherwise of a candidate accused of unfair means in an examination, are essentially quasi-judicial. But the same cannot be said of proceedings emanating from an application for changing the date of birth furnished by a candidate himself, where the considerations which weighed with the Full Bench of the Allahabad High Court and with their Lordships of the Supreme Court in the aforesaid cases are wholly absent.

The last case on which reliance has been placed on behalf of the petitioner is the Division Bench judgment of this Court (Dua, J. and myself) in the *Municipal Committee of Kharar and others* v. *The State of Punjab* (4). In that case it was held that the provisions of section 238(1) of the Punjab Municipal Act, appear to cast a duty on the State Government to act in accordance with the principles of natural justice while coming to an objective finding on some objective material placed before it, which should justify the supersession of the municipality. On that basis it was held that a duty which involved consideration of factual material and formation of opinion on its evaluation leading to the final conclusion of a possible supersession of a Municipal Committee had to be performed in a quasi-judicial fashion. No such duty is cast on the University by the rules which have already been quoted above. It is not the University which proposes to take any action against the candidate, but it is the candidate who wants to go back upon his solemn statement about the declaration of his age given at the time of admission to the examination, which had to be decided by the University in this case. The judgment of this Court in the case of *Municipal Committee of Kharar* is, therefore, of no assistance for deciding the present matter.

(3) A.I.R. 1966 S.C. 875.

(4) I.L.R. (1966) 2 Punjab 615.

Shri Hans Raj Sodhi, the learned counsel for the University, has, on the other hand, relied upon the judgments of the Supreme Court in *Nagendra Nath Bora and another* v. *Commissioner of Hills Division and Appeals, Assam and others* (5), *Jaswant Sugar Mills Ltd., Meerut* v. *Lakshmi Chand and others* (6) *and in Radheshyam Khare and another* v. *The State of Madhya Pradesh and others* (7) and argued that the function of the University under the relevant rules in correcting the date of birth or in declining to do so, is only an administrative act which is not required to be performed in what is known as a judicial manner.

In *Nagendra Nath Bora's case* (supra), while dealing with the exercise of functions under the Eastern Bengal and Assam Excise Act (1 of 1910), the Supreme Court observed that the provisions of the said Act are intended to safeguard the interests of the State on the one hand by stopping or checking illicit distillation and on the other hand by raising the maximum revenue consistently with the observance of the rules of temperance. The authorities under that Act, with the Sub-Divisional Officers at the bottom and the Appellate Authority at the apex of the hierarchy, are charged with those duties. The rules under the Bengal and Assam Act and the executive instructions issued thereunder enjoin upon the said officers, the duty of seeing to it that shops are settled with persons of character and experience in the line subject to certain reservations. The sections of the Bengal Act did not make any reference to the recording of evidence or hearing of parties or even recording reasons for orders passed by the authorities. Hence, held the Supreme Court, if the matter had rested only with the provisions of the Bengal Act, apart from the rules framed thereunder, much could be said for the view that the several authorities concerned with the settlement of excise shops are merely administrative authorities and, therefore, their orders should not be amenable to the writ jurisdiction of the High Court. The Supreme Court then referred to certain rules under the Bengal Act which deal with appeals and revisions and give the widest scope to persons interested in preferring appeals and filing revision petitions, which provisions approximate to the procedure followed by Appellate Authorities. Reference was then made to the relevant provisions of the Assam Revenue Tribunal (Transfer of Powers) Act and the fact that ultimate jurisdiction to

(5) A.I.R. 1958 S.C. 398.
(6) A.I.R. 1963 S.C. 677.
(7) A.I.R. 1963 S.C. 107.

hear appeals and revisions had been divided between the Assam High Court and the authority referred to in section 3(3) of the aforesaid Assam Revenue Tribunal (Transfer of Powers) Act. It was in that situation that their Lordships of the Supreme Court held that the juxtaposition of the two parallel highest tribunals, one in respect of predominantly revenue cases and the other predominantly civil cases would show that the Excise Appellate Authority was not altogether an administrative body which had no judicial or quasi-judicial functions.

In *Radeshyam Khare's case* (supra), the Supreme Court was dealing with the relevant provisions of the C.P. and Berar Municipalities Act (2 of 1922), authorising the State Government to put an end to the very existence of a Municipal Committee. That judgment falls in the category of cases to which the Division Bench judgment of this Court in the case of the *Municipal Committee of Kharar* belongs and is entirely distinguishable from the matter in issue before us.

In the case of *Jaswant Sugar Mills Ltd.* (supra), the Supreme Court was concerned with the interpretation of Article 136 of the Constitution. In that connection it was observed that the character of the power conferred on the Supreme Court by the Constitution being judicial, the determination or order sought to be appealed from must have a character of the judicial adjudication and that though a judicial decision is not always of a Judge or a tribunal invested with power to determine the questions of law or fact, it must, however, be the act of a body or tribunal invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision, it was held, always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with power to determine questions which do affect the rights of citizens, but unless in arriving at its decision such an authority is required to act judicially, its decisions would be executive or administrative. The Supreme Court held in that case that the legal authority to determine questions affecting the rights of citizens does not by itself make the determination judicial. It was held that to make a decision or an act judicial, the following criteria must be satisfied:—

> "(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and

(3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on question of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact."

On a consideration of all the above authorities, it appears to me that the duty which the Panjab University is required to perform under rule 2 of Chapter XV of the University Calendar, Volume III, cannot be called judicial or even quasi-judicial. The scope of the matters to be decided by the University under rule 2 is very limited and is almost mathematical. No elaborate investigation is expected to be held by the University beyond comparing the two alternative dates of birth of a candidate referred to in the relevant part of the rule under which a particular case may fall. No difficulty would arise in a case where the University allows the correction of age. In a case where it declines to do so, it is not giving any finding as to the correct date of birth of a candidate, but merely declining to record a change. In giving its decision under the aforesaid rule, the University does not "declare the right" of a candidate or even his correct age. Nor does the University impose upon the candidate any obligation affecting his rights. It is admittedly open to the candidate to have his correct date of birth adjudicated upon by a competent civil Court. The investigation by the University under rule 2 (supra) is not subject to any procedural attributes. The rule does not contemplate the granting of any opportunity of presenting the candidate's case to the Syndicate. Nor does the rule provide any ascertainment of any fact by means of evidence beyond the specific documents mentioned in the rule itself. No question of law is to be decided by the University in coming to a determination on a matter like this. No legal argument can possibly be envisaged in the decision of such questions as are envisaged by Rule 2. As stated above, the University does not even purport to decide under the aforesaid rule as to what in fact is the correct date of birth of a candidate. Such being the case, the functions of the University under rule 2 do not appear to me to fulfil the three requirements

mentioned by the Supreme Court in the case of *Jaswant Sugar Mills Ltd.* (supra) to clothe its determination with a quasi-judicial character. I would, therefore, hold that the functions of the University under rule 2 aforesaid are not of quasi-judicial nature, but purely administrative and are, therefore, not amenable to a writ of *certiorari*.

The next argument of the learned counsel for the petitioner is based on certain notifications of the Punjab Government. The contention is that in pursuance of those notifications, the District Education Officer, Rohtak, was bound to correct the age of the petitioner and had failed to perform his duty which had resulted in an irreparable loss to the petitioner. It is impossible to go into this question, as neither the Punjab Government nor the District Education Officer, Rohtak, have been impleaded as parties to this case. Even otherwise, it would serve no useful purpose to go into this matter as it is conceded by the learned counsel for the petitioner that the District Education Officer and indeed the authorities under the Punjab Government are no more competent to grant the relief required by the petitioner after he has passed the Higher Secondary examination of the Panjab University.

The last argument canvassed on behalf of the petitioner was that rule 2 quoted above is invalid and *ultra vires* section 31 of the East Panjab University Act (7 of 1947). Mr. Hans Raj Sodhi conceded that the aforesaid rule does not have the status of a "regulation" inasmuch as it has not been framed by the Senate under section 31 of the Act and has not been sanctioned by the Government. He wants us to hold that the rule in question, nor as a matter of fact any of the rules framed by the Syndicate itself (besides those relating to its own procedure) have any statutory character and the said rule is, therefore, not enforceable at law.

The entire management of and superintendence over the affairs of the University is vested by section 11 of the Act in the Senate. The executive Government of the University vests in the Syndicate under section 20 of the Act. No provision in the Act authorises the Syndicate to frame any such rules for transacting the business of the University as the one with which we are concerned. Section 31 of the Act authorises the Senate of the University, with the sanction of the Government to make regulations consistent with the Act, to provide for all matters regarding the University. The relevant rule could be incoporated by the Senate in a regulation and would have

acquired statutory force on being sanctioned by the Government. No such thing has, however, admittedly been done. We would, therefore, hold that rule 2 in Chapter XV of the Panjab University Calendar, 1966, Volume III, dealing with the correction of age in the University certificates is not statutory regulation and is not capable of being enforced in Court. This argument of the counsel for the petitioner has, therefore, gone against his own interest. In this view of the matter, it is not necessary to decide whether the case of the petitioner did actually fall under clause (d) (ii) of rule 2 aforesaid or not, and if so, what is its effect. But in order to avoid the question being left undetermined, it is held that a mere reading of the relevant clause shows that the case of the petitioner does not fall under the aforesaid clause even if it is conceded that clause (d) has to be read disjunctively and not in conjunction with clauses (a) to (c) of rule 2, in which mode of construction I have little doubt. From whichever angle, the matter is looked at, it is obvious that the stand of the University is correct, that present case does not fall within any of the clauses of rule 2, the University has no jurisdiction to effect any change in the date of birth recorded in the Higher Secondary examination certificate of the petitioner, and that, therefore, the petitioner has no right to compel the University to do something which is not enjoined on this statutory body by its constitution, even if a writ of mandamus could otherwise issue in such a case.

No other argumet having been advanced on behalf of the petitioner, he must fail in this Court. Our judgment does not, however, amount to even an implied decision on the merits of the controversy. The learned senior counsel for the University fairly and frankly conceded at the Bar that it would be open to the petitioner to have his correct date of birth determined from a competent civil Court, and if the University is impleaded as defendant in the suit, it would be bound by the decision of the civil Court in such an action and would give effect to it. The counsel for the petitioner has expressed an apprehension that the petitioner may be thrown out by the Delhi College of Engineering before the civil Court can decide the issue. We do not think this apprehension is well founded. The writ petition against the Delhi University and the Delhi College of Engineering is already pending in the High Court of Delhi. The interim orders already obtained by him from that Court will become fruitless on the pronouncement of this judgment, as the interim relief was granted to the petitioner till the disposal of this case. He can,

however, move the Civil Court in which he files the requisite suit for similar interim relief against the Delhi College of Engineering and/or the University of Delhi. Even otherwise, we have little doubt that the Delhi University would not throw out the petitioner at this stage before the decision of the civil Court, if the petitioner has resort to such an action expeditiously and informs the Delhi authorities of the same.

This writ petition must, however, fail and is accordingly dismissed, but without any order as to costs.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and A. N. Grover, J.

EMPLOYEES STATE INSURANCE CORPORATION,—*Appellant*

versus

M/s. SPANGLES & GLUE MANUFACTURERS AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 250 of 1963

February 2, 1967

Limitation Act (XXXVI of 1963)—S. 12—High Court Rules and Orders, Vol. V, Chapter 1-A—Rule 4—Time requisite for obtaining certified copy of the judgment appealed against—High Court Rules and Orders, Vol. V, Chapter 5-B—Rule 11—Time spent in obtaining copy under rule 11 though not permissible—Whether can be excluded—Res judicata—*Appeal referred to Division Bench for decision—Division Bench deciding the point of law involved and remanding the appeal to Single Bench for decision on other points—Letters Patent Appeal filed against the judgment of Single Judge—Point of law decided by the Division Bench—Whether operates as* res judicata *in Letters Patent Appeal.*

Held, that rule 4 contained in Chapter 1-A of Volume V of the High Court Rules and Orders makes the provisions of section 12 of the Limitation Act applicable to Letters Patent Appeals and the appellant is entitled to exclude the time requisite for obtaining a copy of the judgment appealed against whether such copy is filed or not with the appeal. Where a copy of the judgment, certified as true copy by the concerned official of the High Court, was supplied to the Regional Director, Employees State Insurance Corporation, under Rule 11 contained in Chapter 5-B of Volume V of the High Court Rules and Orders, although he was not entitled to it, the said Corporation was entitled to exclude the time spent in obtaining the same, while deciding whether the Letters Patent Appeal filed against that judgment was within time or not.