(ii) The selected candidates do not have any indefeasible right to be appointed to the posts for which they have been selected.

(iii) The directions given by the Bench in Sudesh Kumari's case particularly to the effect that the selection list prepared on October 15, 1989 would not lapse are not in conformity with law.

(iv) The respondent-State of Haryana would examine the cases of persons, who were appointed even though they had not attained the requisite percentage of marks for inclusion in the merit list and were not within the number of posts for which a requisition had been sent to the Board. It would pass orders in accordance with law.

(v) The list prepared by the Board on October 15, 1989 was valid for a period of one year. If a candidate whose name appeared upto Sr. No. 662 has not been appointed so far, the State shall consider his claim and appoint him. All vacancies arising from October 15, 1990 onwards shall be readvertised and recruitment against those vacancies shall be made from amongst the selected candidates.

(34) The writ petition is allowed in the above terms. In the Circumstances of the case, there will be no order as to costs.

R.N.R.

Before Hon'ble R. P. Sethi & Satpal, JJ.

B. D. SHARMA AND OTHERS,—*Appellants.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

L.P.A. No. 566 *of* 1992

30th September, 1994

Letters Patent Appeal 1919 *Clause X—Punjab Reorganisation Act,* 1966—*S.* 82(6)—*Whether service conditions of an employee could be altered without specific approval of Central Government as envisaged under Act—And if altered, could it be to the employees detriment even if the service rules are presumed to have been amended with prior approval.*

Held, that it was not permissible for the State Government to amend Rule 6(b) Class I Rules with retrospective effect under proviso to Article 309 of the Constitution of India so as to render ineligible for promotion.

(Para 17)

Further held, that in exercise of the powers conferred under Article 309 of the Constitution, rules can be framed to regulate the service conditions of the civil servants and subject to the condition that they do not contravene the provisions relating to the fundamental rights as enshrined in Part III of the Constitution. The learned counsel appearing for the appellants have not referred to any vice of discrimination in the amended Rules. It is, however, submitted that as the petitioners have completely been excluded from being considered for promotion, the action of the respondents was unconstitutional and violative of the provisions of Articles 14 and 16 of the Constitution. Generally speaking the exclusion from consideration cannot be authorised unless it has a reasonable nexus to be achieved. In the instant case, exclusion from consideration is justified on the ground of prescribing higher qualifications for promotion.

(Para 20)

Further held, that it had been held by the Supreme Court that classification on the basis of educational qualifications made with a view to achieve administrative efficiency could not be said to rest on any fortuitous circumstances.

(Para 22)

Further held, though on facts it has been found that in T. R. Kapur's case (supra) the Supreme Court had not taken note of the February, 1968 approval letter yet even if it is presumed that the views expressed therein are contrary to what was held in T. N. Khosa's case (supra) and P. Murugesan's case (supra), the High Court has to follow the opinion expressed by the larger Bench of the Supreme Court in preference to those expressed by the smaller Bench of that Court.

(Para 30)

Further held, that the service conditions of the in service employees could, therefore, be altered within the parameters prescribed by the Supreme Court in T. N. Khosa's case (supra) and as reiterated in P. Murugesan's case (supra).

(Para 33)

Sarjeet Singh, Senior Advocate with Vikas Singh, Advocate, *for the Appellant.*

Kamal Sharma, Addl. A.G. *for the Respondent.*

JUDGMENT

R. P. Sethi, J.—

(1) The crucial points of law requiring determination in these appeals are :—

(i) Whether the service conditions of an employee could be altered without specific approval of the Central Government as envisaged by Section 82(6) of the Punjab Reorganisation Act, 1966 ? and

(ii) Whether the service conditions of the in service employee could be altered to his detriment even if the service rules are presumed to have been amended with the prior approval of the Central Government ?.

(2) The determination of these points is necessitated on account of various judgments of this Court in which conflicting views have been expressed. In B. D. Sharma and others *vs.* State of Haryana and others (1), it was held that in view of the letter dated 27th March, 1957 of the Central Government read with latter of the Central Government bearing No. 22/25/67-S.R.(S) issued in the month of February, 1968 prior approval of the Central Government was presumed and declared that the State of Punjab had the authority to amend the rules even if the amendment amounts to changing the service conditions of the employee in the matter of promotions etc.

(3) A contrary view was taken by J. S. Sekhon, J. in *Tek Chand Jain and others* vs. *State of Haryana,* (2) and by V. K. Jhanji, J. in *Ram Sarup Sharma* vs. *State of Haryana and others,* (3).

(4) Letters Patent Appeal Nos. 139, 680, 1270 of 1991, 566 of 1992, 119, 120 and 196 of 1994 are filed against the aforesaid three judgments.

(5) L.P.A. No. 139 of 1991 is directed against the judgment of J. S. Sekhon, J., who after consideding the judgment of the Supreme Court in *Mohd. Shujat Ali and others* vs. *Union of India,* (4), and *T. R. Kapur and others* v. *State of Haryana* (5), held that there was

(1) 1992(3) S.L.R. 752.
(2) 1991 (1) SLR 236.
(3) 1991(3) RSJ 684.
(4) AIR 1974 SC. 1631.
(5) AIR 1987 SC. 415.

no force in the contention of the learned counsel for the State that the general instructions issued by the Central Government under Section 115(7) of the States Re-organisation Act, 1956 would cover the controversy authorising the respondents to amend the rules. The learned Judge, therefore, quashed the promotion orders of the private respondents to the post of Assistant Treasury Officer from Assistant Superintendent (Treasury) and directed the respondent-State to reconsider the cases of the writ petitioners as also the private respondents therein for promotion to the post of Assistant Treasury Officer as per quota rule embodied in Rules 7(1) of the 1962 Rules within a period of three months. It was further held that the impugned Rule 9 of the 1980 Group B Rules *qua* is application to the petitioners excepting petitioner No. 2, who were already in service before the appointed day i.e. 1st November, 1966 was held to be violative of Section 82(6) of the Punjab Reorganisation Act, 1966 (for short the 'Act') on the ground of not taking prior approval of he Central Government.

(6) Similarly, V. K. Jhanji, J. while considering the amendment made in the Punjab Public Relations Department Service Rules, 1958 held that as the impugned notification changed the conditions of service of the petitioners making them totally ineligible for being considered for promotion, the same was violative of Section 82(6) of the Act. The notification dated 28th November, 1988 issued by the State of Haryana amending clause (c) of rule 9 of the 1975 Rules which rendered the petitioners ineligible for promotion to the post of DPRO/PRO was struck down being violative of Section 82(6) of the Act.

(7) However, in *B. D. Sharma's case* (supra), R. S. Mongia, J. referred to the letters of 1957 and 1968 mentioned herein above, and came to the conclusion, "for the reasons recorded above, I hold that there was prior approval of the Central Government under Section 82(6) of the 1966 Act and, therefore, the amendment to Rule 9 of Class II Rules brought about in January, 1969 cannot be struck down on that ground."

(8) Lengthy arguments of the learned counsel for the parties have been heard.

(9) L.P.A. No. 139 of 1991 is dirtcted against the judgment of J. S. Sekhon, J. delivered in C.W.P. No. 3042 of 1980 and L.P;A; Nos. 115, 119 and 120 of 1994 are directed against the judgment delivered on the basis of the aforesaid judgement of J. S. Sekhon, J.

L.P.A. Nos. 680 and 1270 of 1991 are directed against the judgment of V. K. Jhanji, J. delivered in Civil Writ Petition No. 436 of 1989. L.P.A. Nos. 566 of 1992 is directed against the judgment of R. S. Mongia, J. delivered in Civil Writ Petition No. 3644 of 1983.

Sub-section 6 of the Section 82 of the Act provides :—

"Nothing in this Section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of part XIV of the Constitution in relation to the determination of the conditions of service of the persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section 1 or sub-section 2 shall not be varied to his disadvantage except with the previous approval of the Central Government".

(10) It appears that after the re-organisation of the States in the year 1966, the matter of various service conditions to personnel affected by re-organisation was considered with the State representatives at conferece held in summer and in the month of December, 1956. After careful consideration of the views expressed at those conferences, the Government of India decided that conditions of service applicable to personnel affected by re-organisation immediately before the date of re-organisation, should be protected as indicated therein. The question regarding providing protection in respect of rules in the matter of travelling allowance, discipline control, classification, appeal, conduct, probation and departmental promotion was also considered and it was decided, "the Government of India agree with the view expressed on behalf of the State representatives that it would not be appropriate to provide for any protection in the matter of these conditions." The said order specifically further conveyed the decision of the Central Government in the following terms :—

"In respect of such conditions of service as have been specifically dealt with in the proceeding paragraphs, it will be open to the State Governments to take action in accordance with the decisions conveyed therein and so long as Stae Governments act in conformity wth those decisions they may assume the Central Government's approval n terms of the proviso to sub-section (7) of Section 115 in the State Re-organisation Act. In all

other cases involving conditions of service not specifically covered in the preceeding paragraphs, it will be necessary for the State Governments concerned to obtain the prior approval of the Central Government in terms of the above provision before any action is taken to vary the previous conditions of service of an employee to his disadvantage. In the event of any doubt arising as to the intention of the Central Government about any of the points dealt with in this letter State Governments would no doubt refer the matter to the Government of India for clarification."

(11) In the letter of February, 1968 from the Deputy Secretary to the Government of India, Ministry of Home Affairs, New Delhi to the Chief Secretary to the Government of Haryana, it was stated :—

"I am directed to refer to the proviso to sub-section (6) of Section 82 of the Punjab Re-organisation Act, which lays down that the conditions of service applicable immediately before the appointed day to any person referred to in sub-section (1) of sub-section (2) of the section, shall not be varied to his disadvantage except with the previous approval of the Central Government. The question of protection to be afforded in the matter of various service conditions to personnel affected by the Punjab Re-organisation Act has been considered, and it has been decided that the protection of service conditions, as laid down in this Ministry's letter No. 5/6/57-SR(S), dated the 27th March, 1957 in connection with the State-Re-organisation Act, 1956 (copy enclosed) should be made available to the personnel affected by the Punjab Re-organisation Act also.

2. I am to request that appropriate instructions may be issued accordingly to all concerned."

(12) A plain reading of Sub-section 6 of Section 82 of the Act would suggest that conditions of service applicable to a civil servant immediately before the Re-organisation of the States could not be varied to his disadvantage except with the previous approval of the Central Government. It is true that a mere chance of promotion is not a right of a civil servant but it is equally true that he has a right to be considered for promotion which if taken away may affect him adversely. Depriving of a civil servant from being considered for promotion is, therefore, disadvantageous to his

service condition. In *Mohammad Bhakar* v. *Y. Krishna Reddy* (6), it was held by the Supreme Court that a rule which affects the promotion of a person relates to his condition of service. In that case, it was further held that a rule which imposed passing of certain departmental examination a pre-requisite for promotion having been made without previous approval of the Central Government was void. Similarly, in *Mohd. Shujat Ali's case* (supra) it was held, "a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service".

(13) In view of the pre-ponderance of judicial pronouncements it can safely be said that the impugned rules were amended which adversely affected the service conditions of the employees who were in service before the re-organisation of the States of Punjab and Haryana. The point for consideration, however, is as to whether the rules were varied in accordance with the mandate of sub-section 6 of Section 82 of the Act and the amendment made therein was not contrary to the fundamental rights of the civil servant as enshrined in Articles 14 and 16 of the Constitution.

(14) The requirement of prior approval prescribed by Section 82(6) of the Act clearly indicates that the provision is mandatory and no rule could be deemed to have been amended unless prior approval of the Central Government was obtained. Counsel for the parties have no dispute regarding this proposition of law. It is, however, to be seen as to whether in the instant case, prior approval of the Central Government was obtained or not. It has been argued that as no specific approval was obtained with respect to the amendment of the aforesaid Rules, the amendment cannot be permitted to adversely affect the rights of the writ petitioners and should be deemed to be non-existent in so far as their service conditions were concerned. Reliance has been placed upon a judgment of the Supreme Court in *T. R. Kapur's case* (supra) wherein it was held that :

> "It is quite clear that the proviso to Section 82(6), Punjab Re-organisation Act, 1966 is in the nature of a fetter on the power of the Governor under the proviso to Art. 309 of the Constitution to alter the conditions of service applicable to all persons serving in connection with the affairs of the State. It interdicts that the conditions of service applicable to persons referred to in sub-section (1) or sub-section (2) thereof, i.e., members of civil service affected by the re-organisation of the State. The

(6) 1970 SLR 768, SC.

conditions of service of any persons who immediately before the appointed day were serving in connection with the affairs of the existing State of Punjab and are as from the date allocated for service in connection with the affairs of the successor State, i.e. allocated government servants cannot be varied to their disadvantage."

(15) Referring to the amendments made in Rule 6(b) of the Punjab Service of Engineers, Class I, Rules, it was held :

"Under the Class I Rules as they existed immediately prior to the appointed day, i.e., before November, 1, 1966, a member of the Overseers Engineering Service in the Irrigation Branch, Punjab, having a diploma was eligible for being promoted as Sub-Divisional Officer in the Class II Service and then in due course to the post of Executive Engineer in the Class I Service within the quota prescribed for them without having a degree in Engineering. It was not necessary to possess a degree in Engineering as held by this Court in A. S. Parmar's case for purposes of promotion under the unamended R. 6(b) of the Class I Rules, as in the case of promotion to the post of Executive Engineer in Class I Service under R. 6(b) what was essential was eight years' service in that class and not a degree in Engineering. The impugned notification which purported to amend R. 6(b) with retrospective effect, however, renders members of the Class II service like the petitioners who are diploma holders ineligible for promotion by making a degree in Engineering an essential qualification for such promotion which amounts to alteration of the conditions of service applicable to them to their disadvantage without the previous approval of the Central Government and is thus void by reason of the proviso to sub-section (6) of section 82, Punjab Re-organisation Act, 1966."

(16) It appears that the Supreme Court in that case had not taken note of the following observations of the Constitution Bench of that Court in *N. Raghavendra Rao* vs. *Deputy Commissioner, Mangalore* (7),—

"In our opinion, in the setting in which the proviso to Section 115(7) is placed, the expression "previous approval

(7) A.I.R. 1965 S.C. 136.

would include a general approval to the variation in the conditions of service within certain limits indicated by the Union Government. It has to be remembered that Article 309 of the Constitution gives, subject to the provisions of the Constitution, full powers to a State Government to make rules. The proviso to Section 115(7) limits that power, but that limitation is removable by the Central Government by giving its previous approval. In this context, we think that it could not have been the intention of Parliament that Service Rules made by States would be scrutinised in the minutest detail by the Central Government. Conditions vary from State to State and the details must be filled by each State according to its requirements. The broad purpose underlying the proviso to Section 115(7) of the Act was to ensure that the conditions of service should not be changed except with the prior approval of the Central Government. In other words, before embarking on varying the conditions of service, the State Governments should obtain the concurrence of the Central Government. In the memorandum mentioned above, the Central Government, after examining various aspects came to the conclusion that it would not be appropriate to provide for any protection in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion. In our opinion, this amounted to previous approval within the proviso to Section 115(7)......"

Similarly, in *Mohd. Shujat Ali's case* (supra) five Judges Bench of the Apex Court relying upon the earlier judgment in *N. Raghavendra Rao's case* (supra) held :

"It will be evident from the memorandum and particularly paragraph 6 read with paragraph 3 that, so far departmental promotion is concerned, the Central Government told the State Governments that they might, if they so desire, change the conditions of service and for this purpose they might assume the previdus approval of the Central Government as required by the proviso to Section 115, sub-section (7). The conditions of service specifically dealt with in paragraph 3 of the memorandum included those relating to departmental promotion and under paragraph 6 of the memorandum, the Central

Government gave its previous approval to any alteration which the State Governments might wish to make in the conditions of service relating to departmental promotion, because in the opinion of the Central Government, they did not need to be protected. The only argument which could be advanced against this construction of the memorandum was that a general omnibus approval granted in advance to any variation which might be made in the conditions of service relating to departmental promotion could not be regarded as 'previous approval' within the meaning of the proviso to Section 115, sub-section (7). But this argument stands concluded by the decision of the Constitution Bench of this Court in *N. Ragavendra Rao* v. *Deputy Commissioner, A.I.R.* 1965 *S.C.* 136."

(17) In *T. R. Kapoor's case* (supra) it was held that it was not permissible for the State Government to amend Rule 6(b) class 1 Rules with retrospective effect under proviso to Article 309 of the Constitution of India so as to render ineligible for promotion to the post of Executive Engineer in Class I Service, a member of Class II Service who were diploma holders although they satisfy the condition of eligibility of eight years in that class of service. The two Judges Bench appears to have not take note of February, 1968 letter of the Deputy Secretary to Government of India by which general approval was conveyed in terms of sub-section 6 of Section 82 of the Act.

(18) The argument that as the States of Punjab and Haryana were not represented in the conference held in December, 1956 held prior to the issuance of the letter dated 27th March, 1957, the decision taken therein including the decision of granting general approval was not applicable in the States of Punjab and Haryana is of no avail in the instant case. Holding of the conference of the State representatives was neither a condition precedent under sub-section 6 of Section 82 of the Act nor an obligation under any constitutional or statutory provision. Once the Constitution Bench of the Supreme Court had approved of the conferment of the general approval, there was no bar for the Central Government to convey its approval in general terms,—*vide* its letter of February, 1968. R. S. Mongia, J. was, therefore, right in holding that :—

"On the other hand, learned counsel for the petitioners cited *T. R. Kapur and others* v. *State of Haryana and others,* 1986 (4) S.L.R. 155 (S.C.), to contend that February, 1968

letter does not constitute previous approval of the Central Government. It may be observed that in *T. R. Kapoor's case* (supra) the challenge was to the amendment of certain Rules brought about in the year 1968 and the ground of attack was that the amendment was bad in law as there was no previous approval of the Central Government as envisaged under Section 82(6) of 1966 Act. This contention was upheld by the Supreme Court and the amendment was struck down. There is no doubt that in *T. R. Kapoor's case* (supra), the contention as raised by the petitioners in the present case was upheld, but it was observed by the Supreme Court that it was not being suggested or anything has been brought on record to show that the Central Government had given its approval under Section 82(6) of the 1966 Act. It seems that the State of Haryana and the private respondents in *T. R. Kapur's case* (supra) were remiss in not bringing to the notice of the Supreme Court the letter of the Central Government, dated February, 1968. This letter in terms says that the decision under Section 82(6) of the 1966 Act is the same as was taken by the Central Government under Section 115(7) of the State Reorganisation Act, 1956 when letter dated 27th March, 1957 was issued. The learned counsel for the petitioners, however, tried to distinguish this letter of 1968 from the letter of 1957 by submitting that only a part of the decision contained in 1957 letter was being approved in 1968 in so far as it says that protection to only those service conditions which were envisaged by 1957 letter would only be granted. In other words. the argument was that so far as the other conditions were concerned, it was decided that no protection to the service conditions is required, and therefore, the approval under Section 82(6) was necessary before amending 1963 Rules regarding promotions with effect from 1969. I am afraid. I cannot agree with the learned counsel for the petitioners. The petitioner's counsel is not correctly reading 1968 letter. The letter of 1968 says that protection certain service conditions as mentioned in 1957 letter would also be granted under Section 82(6) of the 1966 Act. This would mean that only approval regarding some of the service conditions as envisaged by 1957 letter would be required under Section 82(6) and to the others, no protection as envisaged by 1957 letter would be given. In other words, for changing the service conditions such

like promotion, the prior approval of the Central Government would not be required and it would be assumed."

(19) J. S. Sekhon and V. K. Jhanji, JJ.,—*vide* judgments impugned in these appeals had therefore not properly interpreted the provisions of Section 82(6) of the Act in the light of the judgments of the Hon'ble Supreme Court and the letters of approval issued by the Central Government.

(20) In exercise of the powers conferred under Article 309 of the Constitution, rules can be framed to regulate the service conditions of the civil servants and subject to the condition that they do not contravene the provisions relating to the fundamental rights as enshrined in Part III of the Constitution. The learned counsel appearing for the appellants have not referred to any vice of discrmination in the amended Rules. It is, however, submitted that as the petitioners have completely been excluded from being considered for promotion, the action of the respondents was unconstitutional and violative of the provisions of Articles 14 and 16 of the Constitution. Generally speaking the exclusion from consideration cannot be authorised unless it has a reasonable *nexus* to be achieved. In the instant case, exclusion from consideration is justified on the ground of prescribing higher qualifications for promotion. A Division Bench comprising of A. P. Sen and B. C. Ray, JJ. in *Punjab State Electricity Board* v. *Ravinder Kumar* (8), held that where all the Linemen either diploma holders or non diploma holders were performing same kind of work and duties and belong to the same cadre having a common/joint seniority list to the post of Line Superintendent, they could not be deprived of their right of being considered for promotion on the basis of prescribing quota for diploma holders as was done in that case by the State Electricity Board,—*vide* its letter dated 9th May, 1974. It was pronounced that the impugned letter was wholly arbitrary, illegal, discriminatory and violative of equality clause contained in Articles 14 and 16 of the Constitution of India.

(21) In a later judgment, the Supreme Court in *P. Murugesan and others* v. *State of Tamil Nadu and others* (9) found that the law laid down in *Ravinder Kumar's case* (supra) was not a good law in view of the larger Bench judgment of the Supreme Court in

(8) A.I.R. 1987 S.C. 367.
(9) 1993 (2) S.C.C. 340.

T. N. Khosa's case (supra). Referring to the various contentions, the Supreme Court in P. Murugesan's case held :

"The learned counsel for the respondents relied upon the decision in *Punjab State Electricity Board* v. *Ravinder Kumar Sharma,* (1986) 4 S.C.C. 617, a decision rendered by a Bench comprising of A. P. Sen and B. C. Ray, JJ. The category of linemen in the service of the Punjab State Electricity Board comprised both diploma holders and others who may be referred to as non diploma holders. They constituted one single category having a common seniority list. By means of the rules issued under the proviso to Article 309, a quota was prescribed for diploma holders, the result of which was that diploma holders who were far junior to the non diploma holders. The rule was held to be bad by the learned Subordinate Judge, Patiala. On appeal, the Additional District Judge, Patiala, affirmed the judgment. It was affirmed by the High Court as well. The matter was brought to this Court. This court affirmed the judgment of the High Court. A perusal of the judgment shows that the attention of the Bench was not drawn either to T. N. Khosa or to other decisions. Reference was made only to the observation made between the diplomaholders and non-diplomaholders was discriminatory and bad. Apart from the distinction on facts between that case and the case before us, it is evident that non-consideration of T. N. Khosa and other decisions relevant under the subject had led to the laying down of a proposition which seems to run counter to T. N. Khosa. With great respect to the learned Judges who decided that case, we are unable to accept the broad proposition flowing from the case".

(22) In *State of J & K* v. *T. N. Khosa* (10), it had been held by the Supreme Court that classification on the basis of educational qualifications made with a view to achieve administrative efficiency could not be said to be rest on any fortuitous circumstances. The Court held :—

"Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional oppor-

(10) A.I.R. 1974 S.C. 1.

tunity for persons who fall. substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.

Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints, or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

(23) Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

(24) Judged, from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineer into Degree-holder and Diploma-holders rests on any unreal or unreasonable basis. The classification, according to the appellant, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly co-related to it for higher educational qualifications or at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the fartherst that judicial scrutiny can extend.

(25) On the facts of the case, classification on the basis of educational qualifications made with a view to achieving admini-

strative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineer to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgments of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trial of a higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunity to those possessing higher educational qualification and we are concerned with the reasonableness of the classification not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact would offend against the 14th Amendment of the Americai Constitution only if it is "purely arbitrary, oppressive or capricious" *Joseph Radice* v. *People of the State of New York,* (1923) 68 Law Ed. 690, 695; *American Sugar Ref. Co.* v. *Louisiana,* (1900) 45 Law Ed. 102, 103 and the inequality produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonable and arbitrary" *Arkansas Natural Gas Co.* v. *Railroad Commission* (1923) 67 Law Ed. 705, 710. We need not go that far as the differences between the two classes-graduates and diploma-holders-furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provisions.

(26) Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification. In *State of Mysore* v. *P. Narasingh Rao,* (1968) 1 S.C.R. 407 (A.I.R. 1968 S.C. 349), where the cadre of Tracers was reorganized into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculates in a lower scale, it was held that Articles 14 and 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In *Ganga Ram* v. *Union of India,* (1970) 3 S.C.R. 481 at page 488=(A.I.R. 1970 S.C. 2178) it was observed that :

(27) The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for

being eligible for promotion in its different departments." In the *Union of India* v. *Dr. (Mrs.) S. B. Kohli*, A.I.R. 1973 S.C. 811 (813), a Central Health Service Rule requiring that a professor in Orthopaedics must have a post graduate degree in the particular speciality was upheld on the ground that the classification made on the basis of such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". The argument that the degree qualification was not the only criterion of suitability was answered laconcially as "strange".

(28) Under the Schedule to the 1970 rules a degree qualification is prescribed as a condition for promotion to the post of an Executive Engineer from the cadre of Assistant Engineers. But there is no rule requiring a similar qualification for promotion to the post of Superintending Engineer which is next higher to the post of Executive Engineer or for promotion to the Apex Post of the Chief Engineer. The schedule provides that requirement to these two categories of posts shall be made by promotion from amongst persons in the cadres next below who possess experience for a stated number of years. This circumstance is pressed into service by the respondents in support of their plea that the whole basis of classification is unreal and that the true object could not be the attainment of higher administrative efficiency. If it was thought necessary to prescribe a Degree qualification in order to achieve efficiency in the post of Executive Engineers, *ex hypothesi* it should have been equally imperative, if not more to provide for a similar condition in regard to promotion to higher posts-thus runs the argument.

(29) This argument means that any service reform must embrace every hierachy or none at all. It is often impossible or at any rate inexpedient to reach and remedy all forms of evil, wherever present. Reform must begin somewhere if it has to begin at all and therefore, the administrator who has nice and complex problems to solve must be allowed the freedom to proceed tentatively, step by step. Justice Holmes gave in a similar context a significant warning that: "We must remember that the machinery of Government would not work if it were not allowed a little play in its joints." *Bain Peanut Co.* v. *Pinson* (1930) 75 Law Ed. 482, 489.

The Supreme Court concluded by holding :—

> "We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of

promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate articles 14 and 16 of the Constitution and must be upheld."

(30) Though on facts it has been found that in *T. R. Kapur's case* (supra) the Supreme Court had not taken note of the February, 1968 approval letter yet even if it is presumed that the views expressed therein are contrary to what was held in *T. N. Khosa's case* (supra) and *P. Murugesan's case* (supra), the High Court has to follow the opinion expressed by the larger Bench of the Supreme Court in preference to those expressed by the smaller Bench of that Court.

(31) We are fortified in our views with *Union of India and another* v. *K. S. Subramanian* (11), wherein it was held that such practice is crystallized rule of law.

(32) In *Assistant Collector of Central Excise* v. *Dunlop India Ltd. and others* (12), the Supreme Court referred to the system of dispensing justice in the country and hoped that in the hierarchical system of courts in the country, it was necessary for each lower tier including the High Court to accept loyally the decision of the higher tiers.

(33) The service conditions of the inservice employees could, therefore, be altered within the parameters prescribed by the Supreme Court in *T. N. Khosa's case* (supra) and as reitered in *P. Murugesan's case* (supra).

(34) In view of what has been stated herein above, the judgments of brother V. K. Jhanji, J. in *Ram Sarup Sharma* v. *State of Haryana*, 1991 (3) R.S.J. 684. impugned in L.P.A. Nos. 680 and 1270 of 1991 in C.W.P. No. 436 of 1989 are hereby set aside being no good law. Consequently, L.P.A. Nos. 680 and 1270 of 1991 are allowed. Similarly, the judgment of J. S. Sekhon, J. in *Tek Chand Jain* v. *State of Haryana* (13). impugned in L.P.A. No. 139 of 1991 in C.W.P. No. 3042 of 1980 is also set aside. Consequently, L.P.A. Nos. 139 of 1991. 115, 119 and 120 of 1994 are allowed. The judgment of R. S. Mongia, J. In *B. D. Sharma and others* v. *State of Haryana* (14), impugned in

(11) A.I.R. 1976 S.C. 2433.
(12) (1985) 1 S.C.C. 260.
(13) 1991 (1) S.L.R. 236.
(14) 1992 (3) S.L.R. 752.

L.P.A. No. 566 of 1992 in C.W.P. No. 3644 of 1983 is upheld and consequently L.P.A. No. 566 of 1992 is dismissed.

(35) It has been pointed out by the learned counsel appearing for the affected employees that there exists a general rule in the Service Rules applicable to their clients providing that, "where the government is satisfied that operation of any of the rules causes hardship in any particular case, it may dispense with or relax the regulation of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.". In view of this Rule, we would appreciate if the government exercises a power of relaxation in appropriate cases in favour of those employees who have been deprived of their right of promotion on the ground of prescribing qualifications under the amended rules. No order as to costs.

J.S.T.

Before Hon'ble A. L. Bahri & N. K. Kapoor. JJ.

TARA SINGH.—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 8916 *of* 1994.

22nd July, 1994.

Punjab Municipal Elections Rules, 1952—*Rls.* 29(2-*A*), 37 & 51 (*xi*) (*c*)—*Conduct of election—Material irregularity—No finding regarding such material irregularity affecting the result of the elected candidates—Order setting aside elections—Such order not valid.*

Held, that the mere improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of a vote which is void-or non-compliance with the provisions of the Act of the Rules or mistake in the use of any form annexed will not amount to material irregularity unless it further materially affects the result of election. The authorities below did not record a finding that on account of acceptance or non-acceptance of any valid vote or irregularity in the forms it materially affected the result of the election of the petitioner. In the absence of that finding, the election of the petitioner could not be set aside.

Ballot papers containing small portions of thumb prints—Whether such ballot paper liable to be rejected.