Before Hon'ble A. L. Bahri, Ashok Bhan & Jawahar Lal Gupta, JJ.

BIJENDER SINGH & OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA & ANOTHER,—*Respondents.*

C.W.P. No. 174 *of* 1992

13th July, 1994

Constitution of India—1950 *Arts.* 14, 16, 226 & 309—*Haryana Govt. instructions dated 20th January,* 1988—*Selection of Clerks—Selection made by Subordinate Services Selection Board in excess of requisition is illegal—Board has no jurisdiction or power to enlarge the number of posts or recommend candidates far in excess of the Government requisition—Selected candidates do not get any indefeasible right to be appointed—Government instructions of* 1988 *making waiting list valid only for one year—Waiting List will lapse thereafter.*

Held, that the Board had received requisitions for only 662 posts, it selected 5373 candidates. If all these selected candidates were to be appointed, all those persons, who may have become eligible by the date of the availability of the posts or after the last date for submission of applications, would be deprived of the chance to apply in respect of more than 4500 posts. Such persons would get no chance to be considered against the posts under the State. The guarantee contained in Article 16 in respect of these posts would be clearly violated.

(Para 10)

Further held, that the State is bound to act in a manner that the guarantee under Article 16 is not violated. If the State proceeds to advertise certain posts and it is established that on the date of advertisement only 662 posts were available or could have been anticipated within a reasonable time, it cannot select candidates to fill vacancies far in excess of those which have been actually advertised.

(Para 11)

Further held, the Subordinate Services Selection Board has no jurisdiction or power to enlarge the number of posts or recommend candidates far in excess of the posts for which a requisition has been placed before it. Normally, while sending a requisition, the departments of the Government would keep in view the actual number of posts available with them as also the vacancies which may be anticipated. For this purpose, instructions have been issued by the Government,—*vide* its letter dated January 20, 1988, wherein the extent to which the Board can prepare the waiting list has been specified. It has also been provided that the main list as well as the waiting list shall remain valid only for a period of one year. Thereafter, the

list would be scrapped and "if any further demand is received by the Board, it would process the matter afresh and make further recommendations." In the present case, the Board acted in total disregard of the instructions issued by the Government when it proceeded to prepare a merit list of 5,373 candidates.

(Para 13)

Further held, that the selection agency cannot select candidates far in excess of the posts available on the date of the advertisement. Of course, a small percentage of candidates or as may be desired by the Government can be kept on the waiting list so that in the event of some candidates not joining the posts or being found unsuitable on verification of their antecedents or on physical examination, the next in order of merit may be made available. However, a wholesale departure for the number of posts advertised by the Board is not at all permissible.

(Para 14)

Further held, that in the normal course, if all conditions of eligibility etc. are fulfilled, the selected candidates should be appointed in order of their merit. A departure from the merit list can be rarely permitted only if it is justified on good grounds. However, if the State feels that it does not need to employ the selected candidates or that the norms adopted by the selecting agency are not just and fair, it can refuse to make appointments. In such an event, the selected candidates will not be entitled to claim that they have an indefeasible right to be appointed.

(Para 15)

Further held, that the selected candidates do not get any indefeasible right to be appointed.

(Para 17)

Further held, that :—

(i) The Selection Board cannot make the selection in excess of the number of posts for which a requisition has been placed before it. The waiting list prepared by the Board has to be confined to the number prescribed by the Government.

(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 confirmity 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 wa valid for a period of one year. If a candidate whose nam

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 re-advertised and recruitment against these vacancies shall be made from amongst the selected candidates.

(Para 33)

S. K. Sud, Advocate for Petitioner No. 1.

Surya Kant, Advocate Petitioner No. 2.

D. R. Bansal, Advocate for Petitioner No. 3.

H. L. Sibal, A.G. Haryana with R. C. Setia, Addl. AG Haryana, *for the Respondent.*

Ram Kumar Malik, Advocate for No. 3 to 12 Respondents.

B. R. Gupta, Advocate for added respondent.

(Judgment of Full Bench consisting of Hon'ble Mr. Justice A. L. Bahri, Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice Jawahar Lal Gupta, dated 13th July, 1994)

JUDGMENT

Jawahar Lal Gupta, J

(1) The petitioners approached this Court with a prayer that "the waiting list of Clerks mentioned by the Subordinate Services Selection Board as a result of selection list announced on 15th October, 1989" for appointment to the posts of Clerks in different departments in the State of Haryana be quashed. In response to the notice issued by the Motion Bench, the respondents, *viz.* the State of Haryana and the Subordinate Services Selection Board (hereinafter referred to as 'the Board') appeared and pointed out that they were acting in conformity with the judgment of a Division Bench of this Court in (*Sudesh Kumari* v. *State of Haryana and others*) (1), whereby it was directed that "till such persons who are higher in merit are appointed, *the selection list prepared on 15th October,* 1989 *would not lapse irrespective of any instructions to the contrary issued by the State of Haryana,* if any." (Emphasis supplied). The Motion Bench heard the counsel for the parties. Their Lordships even recorded the statement of Mr. M. S. Madan, the present Secretary of the Board. They had certain reservations about the view expressed by the Division Bench. Consequently, the Bench directed that the case be placed before a larger Bench "to reconsider the decision rendered in *Sudesh Kumari's case* (Supra)." This is how the matter has been placed before us. A few facts may be noticed.

(1) 1991(1) R.S.J. 18.

(2) On July 22, 1987, the Board advertised "some posts of Clerks for various Haryana Government offices." Factually, the Board had received requisitions from different Departments for a total of 662 posts. In pursuance to the advertisement, a large number of candidates submitted their applications. After conducting the written test, the Board selected a total of 5,373 candidates on October 15, 1989. It recommended the names of 1,692 candidates to different Departments. Certain persons, who were lower in merit were actually appointed, while others, though higher in merit, were not appointed as the department/s to which their names had been recommended were unable to accomodate them. Some of the candidates, who had failed to get appointment approached this Court through C.W.P. No. 8187 of 1990 (*Sudesh Kumari* v. *State of Haryana and others*). A division Bench of this Court accepted this writ petition,—*vide* judgment dated October 10, 1990. It, *inter-alia,* gave the following directions :—

> By directing the Board at this stage to recommend the names of the petitioners and other similarly situated persons who are higher in merit and whose names have been received back from the departments as they could not be appointed, would at this juncture disturb the persons who have already been appointed in the other departments, who are though lower in merit. We would not like to disturb such persons who have been appointed in the other departments who are lower in merit. Under the circumstances, we direct that from now onwards whenever a requisition is received from any department for filling the posts of Clerks, all persons who are higher in merit as compared to the last person who might have been appointed as a Clerk, till today on the basis of the merit prepared on 15th October, 1989, shall be appointed first. Till such persons who are higher in merit are appointed, the selection list prepared on 15th October, 1989 would not lapse irrespective of any instructions to the contrary issued by the State of Haryana, if any."

(3) It appears that the decision in *Sudesh Kumari's case* (supra) was followed in some other cases also. As a result of the above noted directions, no posts of Clerks have been advertised by the Board after July, 1987. The two petitioners (Petitioner No. 3 having already withdrawn), who had been rejected by the Board, have approached this Court with the prayer that the list prepared by the Board on October 15, 1989 be quashed. They aver that the job opportunities available in the State of Haryana are "nominal" and it

is likely that "by the time the waiting list is exhausted, they would be over-age and ineligible to apply for the posts". According to the petitioners, the selection list prepared by the Board cannot remain valid for ever and has to be 'scrapped'. Otherwise, the waiting list of 4,000 candidates would last for a decade which would have the effect of depriping various eligible persons of the chance to compete for the posts of Clerks. They also aver that the list prepared by the Board was not fair. Persons, who had not applied for the posts in accordance with the conditions of the advertisement, had been selected for the jobs on account of extraneous considerations. Even those who had not appeared or had failed in the written test had been selected on the recommendations of the politicians "then in power" and "the candidates belonging to Meham and Sirsa Districts" were unduly favoured. It has also been pointed out that the selections made by the Board for the posts of Taxation Inspectors were also arbitrary and an enquiry by the C.B.I. had been ordered by their Lordships of the Supreme Court. They aver that the candidates, whose names are not borne on the selection list had been recommended for appintment in the Excise and Taxation Department for extraneous considerations. Such persons as were lower in merit had been recommended for appointment to 'A' Grade Offices while those who were higher in merit are still awaiting appointments. According to the petitioners, 207 posts were actually available at the time of advertisement. As such, the number of selected candidates including those on the waiting list could not have exceeded 300. However, the Board had arbitrarily prepared a merit list of 5,373 candidates which was not at all justified or valid. Accordingly, the petitioners maintain that there is no justification for the Board to maintain a waiting list of about 4,000 candidates especially when about 1,300 persons have already been appointed. They maintain that the action is violative of Articles 14 and 16 of the Constitution of India.

(4) On behalf of the respondents, a written statement has been filed by Mr. M. S. Madan, the Secretary of the Board. It has been averred that "there was requisition of 662 posts of Clerks, at the time of advertisement...... the Board made a selection of 5,373 candidates. The selection was made beyond the advertised posts with material irregularity...... The selection made by the Board is patently illegal and not sustainable in the eyes of law". It has been further averred that the decision given by this Court in *Sudesh Kumari's case* (supra) is binding on the respondents and as a result the appointments have to be made out of the selection list dated

October 15, 1989. It has been admitted that "the anticipated 4,000 vacancies are likely to be available in 10 years or so". By that time, the petitioners would become over-age. It has also been averred that the "names of candidates were not recommended to various Departments strictly in accordance with the merit prepared by the then Board and many of the persons who were far below (in) the merit list i.e. at Sr. No. 4,645 were recommended for appointment, whereas the names of candidates, who were among the first hundred were not sponsored which has created embarassing position for the Board. This pick and choose policy was resorted to by the Board through its Secretary for political considerations. The only way out, out of this position is that their names should be withdrawn and in their place the names of the candidates who are higher in merit list should be recommended. The waiting list which has expired under Government instructions Annexure P. 2 are allowed to expire and the vacancies are readvertised giving opportunity to new candidates for appointments in Government offices". It has also been pointed out that "factual matter of the case was not canvassed before the Hon'ble Court at the time of the arguments." The respondents admit that certain candidates as mentioned by the petitioners, who had failed to qualify the test, had been recommended for appointment by the Board to various departments. Various other irregularities have also been pointed out. It has also been suggested that the Board was swayed by "political considerations". In this situation, it has been prayed that the writ petition be disposed of keeping in view the legal and factual submissions made in the written statement.

(5) C. M. Application No. 590 of 1994 was filed by 15 persons (Dilbag Singh and others) under Order 1 Rule 10 of the Code of Civil Procedure to implead them as respondents on the ground that the petitioners filed by them had already been accepted. C. M. Application No. 4644 of 1994 was also filed by these persons for permission to place on record a short written statement. These applications were allowed.

(6) In the written statement filed on behalf of the added respondents, it has been *inter-alia* averred that persons, like the petitioners, whose claim had been considered and were not included in the merit list have no *locus standi* to challenge the action of the respondents in appointing persons beyond the number of posts which were available at the time of the advertisement. It has been further averred that "all those persons in whose favour the Division Bench judgment is there, are necessary parties" and in their absence no order to their prejudice can be passed. The respondents further

aver that on the petitioners' own showing the merit list was valid upto October 15, 1990—On that date more than 6,000 Clerks were working on *ad hoc* basis or daily wages If all these posts were filled up from amongst the selected candidates, each one of the 5,373 persons placed on the merit list would have been appointed. However, the Haryana Government took a policy decision to regularise the services of *ad hoc* appointees. As a result, the services of more than 5,000 Clerks were regularised with effect from January 1, 1991. Even in respect of those Clerks, who had not completed the requisite period of two years' service by December 31, 1990, a policy decision was taken that the services of all those *ad hoc* employees who had completed more than two years service upto March 31, 1993 be regularised. The respondents point out that the Clerks working on daily wages had completed along with them, but were not selected. In spite of that, they were allowed to continue in service and later on their services had been regularised. In case their services had been terminated, all the selected candidates would have been appointed. Relying on the judgment of their Lordships of the Supreme Court in Piara Singh's case, as also in S.L.Ps (C) Nos. 18354 and 20095 of 1991, the respondents aver that the selected candidates have a right to be appointed. Reliance for this purpose has also been placed on the instructions issued by the Chief Secretary to the Government of Haryana,—*vide* letter dated May 17, 1976. The respondents also aver that the writ petition has, in fact, been filed at the instance of the Chairman of the Subordinate Services Selection Board. According to them, the selection had been challenged and the writ petition was dismissed by a speaking order. It has also been averred that the Board has been intentionally avoiding to implement the judgement of the Division Bench in *Sudesh Kumari's case* (Supra). According to the respondents, requisitions for a number of posts of Clerks had been received by the Board and inspite of the directions in *Sudesh Kumari's case* (Supra), it did not forward the names of the selected candidates. They also aver that the decision of the Division Bench is not only legal but also just and fair. Accordingly, the respondents pray that the writ petition be dismissed with costs.

(7) We have heard learned counsel for the parties. The main questions that arise for consideration are :—

(i) Could the Board select 5,373 candidates when it had a requisition for only 662 posts ?

(ii) Do the selected candidates have an indefeasible right to be appointed ?

(iii) Are the directions given by the Division Bench in *Sudesh Kumari's case* (Supra) particularly to the effect that "till such persons who are higher in merit are appointed, the selection list prepared on 15th October, 1989 would not lapse......" in conformity with the provisions of Articles 14 & 16 of the Constitution of India ?

Re-Question No. (i)

(8) Article 16 is an instance of the general rule of equality laid down in Article 14 of the Constitution of India. It guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. While the State had a right to lay down qualifications and conditions of eligibility which have a reasonable relation with the requirements of the posts, it is not entitled to make appointments in a "cloistered manner" and to recruit people without giving the eligible candidates a chance to apply and be considered on merits. It is in order to effectuate the guarantee contained in Article 16 that the State issues an advertisement and gives a public notice regarding the availability of posts. It is an invitation to the eligible candidates to submit their applications. To be effective and in consonence with the guarantee contained in Article 16, the advertisement should be precise. Normally, the number of posts should be specifically mentioned. The qualifications and conditions of eligiblity should be clearly spelt out. Vagueness can lead to confusion and complications. It should be avoided.

(9) In the present case, it is established on the record that the Board had received requisitions for a total of 662 posts (which may have included even the vacancies anticipated in a year) from different departments in the State. It advertised the posts on July 22, 1987. The closing date for receipt of applications was August 22, 1987.

The candidates had to fulfil the conditions of eligibility regarding qualifications and age by the prescribed date. Consequently, all such persons, who had not attained the prescribed age or qualified the prescribed examination before the last date for submission of applications were not eligible to apply. As such, only those who fulfilled the conditions of eligibility were entitled to submit their applications and be considered on merits. Those who acquired the requisite qualifications after the prescribed date or had not attained the prescribed age by then had to wait till such time as another advertisement was issued.

(10) In spite of the fact that the Board had received requisitions for only 662 posts, it selected 5,373 candidates. If all these selected candidates were to be appointed, all those persons, who may have become eligible by the date of the availability of the posts or after the last date for submission of applications, would be deprived of the chance to apply in respect of more than 4,500 posts. Such persons would get no chance to be considered against the posts under the State. The guarantee contained in Article 16 in respect of these posts would be clearly violated.

(11) Mr. R. K. Malik, learned counsel for the added respondents, contended that the rights of the petitioners have not been adversely affected. He submitted that the petitioners had actually applied for the posts and in spite of the fact that the Board had selected 5,373 candidates, their names were not included in the merit list. He consequently submitted that the petitioners had no *locus standi* to challenge the selection. We are unable to accept this contention. Firstly, the right of a candidate to be considered for appointment to a post under the State is not extinguished by a failure on one occasion. Those who have failed in their first attempt can do better on the second occasion. If a chance is due to them, it cannot be denied. Secondly, the State is bound to act in a manner that the guarantee under Article 16 is not violated. If the State proceeds to advertise certain posts and it is established that on the date of advertisement only 662 posts were available or could have been anticipated within a reasonable time, it cannot select candidates to fill vacancies far in excess of those which have been actually advertised. This rule has been reiterated by the Apex Court in two recent pronouncements. In *Hoshiar Singh* v. *State of Haryana and others* (2), it has been held as under :

> "......The appointment on the additional posts in the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board

(2) J.T. 1993 (5) S.C. 63.

even though the requisition was for 8 posts only, was not legally sustainable."

(12) Similarly, in *State of Bihar* v. *Madan Mohan Singh* (3), it has been observed that if a selection list "has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who have become eligible subsequent to the said advertisement and selection process." (Paragraph 7).

(13) Further more, we are also of the view that the Board has been constituted by the State Government under Article 309 of the Constitution. It is charged with the function of selection and recommending candidates for appointment against posts for which a requisition is sent to it. Its function is to select and recommend candidates so as to enable the competent authority to make appointments against the posts for which a requisition had been sent. It has no jurisdiction or power to enlarge the number of posts or recommend candidates far in excess of the posts for which a requisition has been placed before it. Normally, while sending a requisition, the departments of the Government would keep in view the actual number of posts available with them as also the vacancies which may be anticipated. For this purpose, instructions have been issued by the Government,—*vide* its letter dated January 20, 1988, wherein the extent to which the Board can prepare the waiting list has been specified. It has also been provided that the main list as well as the waiting list shall remain valid only for a period of one year. Thereafter, the list would be scrapped and "if any further demand is received by the Board, it would process the matter afresh and make further recommendations." In the present case, the Board acted in total disregard of the instructions issued by the Government when it proceeded to prepare a merit list of 5,373 candidates.

(14) Accordingly, we answer the first question in the negative and hold that the selection agency cannot select candidates far in excess of the posts available on the date of the advertisement. Of course, a small percentage of candidates or as may be desired by the Government can be kept on the waiting list so that in the event of some candidates not joining the posts or being found unsuitable on verification of their antecedents or on physical examination, the next in the order of merit may be made available. However, a whole-sale departure for the number of posts advertised by the Board is not at all permissible.

(3) 1993(5) S.L.R. 601.

Re-Question No. (ii)

(15) In our country, poverty stalks the land. A majority of people live below the poverty line. A large number of educated youth are unemployed. Whatever be the level of posts, an advertisement attracts a large number of applications. The applicants compete. Those who are selected are entitled to entertain an expectation that they would be appointed. In the very nature of things, such persons as are found suitable for appointment should be appointed. The advertised posts should be filled up in the order of merit determined by the selecting agency. This, is of course, subject to the right of the employer to determine the suitability of the candidates on verification of their antecedents and physical examination etc. In the normal course, if all conditions of eligibility etc. are fulfilled, the selected candidates should be appointed in order of their merit. A departure from the merit list can be rarely permitted, if it is justified on good grounds. However, if the State feels that it does not need to employ the selected candidates or that the norms adopted by the selecting agency are not just and fair, it can refuse to make appointments. In such an event, the selected candidates will not be entitled to claim that they have an indefeasible right to be appointed.

(15A) In the present case, requisitions for 662 posts had been received by the Board. The Board could have selected 662 candidates or a few more to cater for uncoreseen circumstances. However, it actually selected 5,373 candidates, *viz.* 4711 in excess of the posts for which requisitions had been submitted to it. This was grossly unfair. In such a situation, the candidates selected in excess of the posts available at the time of the advertisement cannot claim that they had an indefeasible right to be appointed. The rule in this behalf was initially enunciated by their Lordships of the Supreme Court in *State of Haryana* v. *Subhash Chander Marwaha* (4), when their Lordships held as under :—

> "......that the more entry in this list of the name of candidate does not give him the right to be appointed. The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed. The list is merely to help the

(4) 1974 (3) S.C.C. 220.

State Government in making the appointments showing which candidates have the minimum qualifications under the Rules. The stage for selection for appointment comes thereafter......"

The above rule thereafter was reiterated in *Neelima Shangla* v. *State of Haryana* (5), in the following words :—

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* for appropriate reasons. And if the vacancies or any of them are filled, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted this correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana *v.* Subhash Chander Marwaha, Neelima Shangla *v.* State of Haryana, or Jatendra Kumar *v.* State of Punjab."

(16) This view has been reiterated in two recent pronouncements of their Lordships of the Supreme Court in *Shankarsan Dash* v. *Union of India* (6) and *Sabita Prasad and others* v. *State of Bihar and others* (7).

(17) Accordingly, we hold that the selected candidates do not get any indefeasible right to be appointed.

Re Question No. (iii)

(18) This brings us to the third question, which relates to the correctness of the view taken by a Division Bench of this Court in

(5) 1986(4) S.C.C. 268.
(6) 1991 (2) S.L.R. 779.
(7)1992 (3) Scale 361.

Sudesh Kumari's case. The precise grievance made by the petitioners was that while giving appointments, persons who were higher in merit had been ignored while candidates lower in merit had been appointed. The factual position was not controverted on behalf of the respondents. It was admitted that "six candidates lower in merit have been appointed by other departments, whereas the petitioners, who were higher in merit, have not been given appointments by the department, where the names of the petitioners were recommended and the names have been sent back to the Board." In the background of this factual position it was held that "once there is a joint selection and one common merit is prepared, certainly persons higher in merit have a prior right of appointment than the persons lower in merit...... If that is not done, it will be a clear violation of the provisions of Articles 14 & 16 of the Constitution of India". In principle, there can be no dispute regarding the view expressed by the Bench. However, the Bench proceeded to give the directions, as noticed above. It directed the State to make appointments from the list till all candidates who were higher in merit were appointed. It was held that the merit list shall not lapse. The direct consequence is that the State was precluded from advertising the posts.

(19) Are these directions in conformity with the law ?

(20) On behalf of the petitioners, as also on behalf of the State of Haryana and the Board, it has been contended that these directions are totally violative of Articles 14 & 16 of the Constitution of India. Learned counsel for the added respondents, however, contest this claim. Mr. B. R. Gupta, who appeared for one of the added respondents, submitted that he was at Sr. No. 64 in the merit list and has yet not been appointed. Mr. R. K. Malik, however, submitted that, in fact, the directions given by the Bench were just and fair.

(21) After hearing the learned counsel for the parties, we find that full facts had not been brought to the notice of the Bench in *Sudesh Kumari's case.* On a perusal of the judgment, we find that whether the exact number of posts for which a requisition had been placed with the Board nor the number of persons whose names had been included in the merit list were specifically pointed out to the Bench. It was only mentioned that the requisition was for more than 1,000 posts. This was factually not correct. In this situation, pointed attention of the Bench was not drawn to the fact that the Board had prepared a merit list in violation of the instructions of

the Government and far in excess of the number of posts for which a requisition had been sent to it. It is thus apparent that the parties had not disclosed the correct facts to the Court and as a result the Bench was persuaded to give the above noted directions. Since the factual/position had not been correctly brought to the notice of the Court, the matter has to be examined afresh.

(22) Factually, it has been averred in the affidavit filed on behalf of Respondent Nos. 1 and 2 that "in all there was a requisition of 662 posts of Clerks, at the time of advertisement" and that "the Board made selection of 5,373 candidates". This being so, we are of the view that the Board had erred in selecting 5,373 candidates. In our view, the Board had to make selection in accordance with the instructions issued by the Government and for the posts for which a requisition had been sent to it. It could have prepared a waiting list only in conformity with the instructions issued by the Government. It failed to do so. As already held, the Board was not competent to make selection in excess of the prescribed number. Such a selection conferred no right on the persons, whose names had been included in the merit list. Probably, if these facts had been brought to the notice of the Bench, it would not have given the aforesaid directions.

(23) It is true that a person higher in merit has a better right to be considered for appointment than those lower than him. In this context, the observation of the Bench that the action of the respondents was violative of Articles 14 & 16 of the Constitution is correct. However, in the peculiar facts of this case, it appears to us that when the Board makes a departure from the merit list and unjustifiably ignores persons who are higher in merit its action is questionable and should be set aside. The appointment of a person, who is lower in merit in perference to those higher than him being violative of Articles 14 & 16 of the Constitution should be quashed. Instead of doing this, the Bench proceeded to give the aforesaid directions. The result was that the rights of a large number of candidates, who may have become eligible subsequent to the advertisement to the posts had been curtailed for years to come. As pointed out by the respondents, the merit list prepared by the Board would last for another decade. During this long period, innumerable eligible candidates would be deprived of their rights of being considered for appointment to the posts of Clerks. This would be totally violative of their rights under Articles 14 & 16 of the Constitution.

(24) Consequently, we hold that the directions were obtained by the petitioners in that case without disclosing the full facts to the

Court and in the peculiar facts of this case, these directions cannot be sustained. These are violative of the rights of the petitioners and a large number of other persons, who had not been given any chance to bring the correct facts to the notice of the Court. As a result, respondents Nos. 1 & 2 shall not be bound by these directions.

(25) Mr. Malik, appearing for the added respondents, however, submitted that, in fact, about 5,000 vacancies were available and had been actually occupied by persons, who had been appointed on *ad hoc* basis. He further submitted that in pursuance to the directions in Piara Singh's case and the various policy decisions taken by the State Government, their services had been regularised.

(26) We are unable to accept this contention. The regularisation of services were ordered in accordance with the judgment of the Court and the policy decisions taken by the Government. The validity of these decisions having not been challenged, the very basis of the argument is non-existent. Secondly, even if it is assumed that the posts were available, we are of the view, as already observed, that the Board could have made selection only in respect of the posts for which a requisition had been sent to it. It had no jurisdiction to prepare a merit list in violation of the instructions of the Government or the requisition sent to it. The action of the Board being without jurisdiction, the added respondents can derive no advantage from the fact of availability of posts. Secondly, the *ad hoc* employees are a class apart. The added respondents can claim no right in regard to those posts. Thirdly, in view of our finding that mere selection gives no right, the availability of posts will not entitle the added respondents to claim that the directions given by the Division Bench should be enforced.

(27) Mr. Malik also contended that no order to the prejudice of persons, who are not parties to this case, can be passed by this Bench. As a normal rule, it is correct that no order to prejudice of a person can be passed without hearing him. However, the peculiar position in the present case is that the Board prepared a merit list in excess of the posts which were available at the relevant time. The prayer of the petitioners is that the merit list which is now being treated as a waiting list deserves to be scrapped in view of the instructions issued by the Government. We have already held that the Board could not have prepared a merit list of 5,373 candidates and that the selected persons have no indefeasible right to be appointed. Besides that, a reference to the instructions issued by the Government shows that at the expiry of one year from the date

of recommendation, the list automatically lapses. The validity of these instructions has not even been questioned before us. In this situation, it is apparent that the list had automatically lapsed on October 9, 1990. That being so, we are merely enunciating the position of law. Still further, the view point of the selected candidates has been duly represented before us. Accordingly, we are of the opinion that the writ petition cannot be dismissed on the ground that necessary parties have not been impleaded. The objection raised by Mr. Malik is, accordingly, rejected.

(28) It was also submitted by Mr. Malik that some of the selected candidates have filed petitions which have been allowed by this Court. Learned counsel, however, did not give reference of any particular case or decision. Assuming that the directions similar to those in *Sudesh Kumari's* case were given, we are of the opinion that the parties having not disclosed full facts to the Court and the directions being in violation of Articles 14 & 16 of the Constitution, would not be binding on respondents Nos. 1 and 2, in this case.

(29) Mr. B. R. Gupta, counsel for one of the added respondents, submitted that the applicant had not been appointed in spite of the fact that he had been placed at No. 64 in the merit list. If true, it is grossly unfair.

(30) Before parting with the judgment, we are constrained to express our dismay and displeasure at the manner in which the Board as it existed in the year 1989 had acted. It has been pointed out to us that the Board not only made selections in excess of the number of posts for which a requisition was placed with it, but it even included and recommended names of candidates "who has not qualified the written test......" Instances have been quoted to show that the recommendations of the Board had "political overtones." It has also been pointed out that the names of certain candidates appear at more than one place in the merit list. Names of candidates who had not "even qualified the written test were recommended intentionally to the highly prized department i.e. the Excise & Taxation Department under political considerations.

(31) We cannot do better than notice what their Lordships of the Apex Court observed in a somewhat similar situation while dealing with the selection of Taxation Inspectors made by the Haryana Subordinate Services Selection Board in *Krishan Yadav and another v. State of Haryana and others.* (Civil Appeal Nos. 726 and 727 of 1993). Their Lordships said that "fraud has reached its crescendo. Deeds as foul as these are inconceivable much less could

be perpetrated." Their Lordships were further pleased to observe as under :—

> "It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trust. Such offices are meant for use and not abuse. From the Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud."

Almost similar is the position in this case.

(32) Tsar Nicholas of Russia once said, "I don't rule Russia ; ten thousand Clerks do." In India we support the largest bureaucracy in the world. The salary bill for Union Government employees alone is more than 15,000 crores per annum. Similar is the position in various States. It is thus of paramount importance that all bodies like the Public Service Commissions and the Selection Board perform their duties to the best of their ability without fear or favour, affection or ill-will and select the best persons to man the civil posts on consideration of merit alone. Each citizen has an interest in the selection. The persons entrusted with this job must 'use' their position to select the best and not 'abuse' it. Administrative reforms must begin with the selection of proper persons for the Selection Boards and the Service Commissions. Only then it can be possible for us to make some headway in facing the problems of inefficiency and corruption in facing the problems of inefficiency and corruption in the administration. Members of these bodies should prefer national interest to their own. We hope and trust that the successor Boards shall not do what was done in 1989.

(33) Having considered the matter and keeping in view the peculiar facts of this case, we hold that :

(i) The Selection Board cannot make the selection in excess of the number of posts for which a requisition has been placed before it. The waiting list prepared by the Board has to be confined to the number prescribed by the Government.

(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.*