
Constitution Bench which decided Kehar Singh's case. Therefore, the observation made by the Constitution Bench in Kehar Singh's case does not upturn any ratio laid down in Maru Ram's case. Nor has the Bench in Kehar Singh's case said anything with regard to using the provisions of extant Remission Rules as guidelines for the exercise of the clemency powers"

(37) A perusal of the above shows that in *Maru Ram's case* (supra), the Constitution Bench had recommended the framing of guidelines. In *Kehar Singh's case* (supra), it was observed that "specific guidelines need not be spelled out". However, the Bench did not lay down that guidelines could never be issued.

(38) The position that emerges is that by the mandate of Section 433-A, a person who is found to be guilty of an offence for which death is one of the punishment or in whose case a sentence of death has been commuted into one of imprisonment for life, the person has to serve atleast 14 years of imprisonment. However, the provision of Section 433-A does not affect the constitutional power embodying the mercy jurisdiction under Articles 72 and 161. The instructions impugned in the petitions before the Bench are clearly intended to regulate the exercise of clemency jurisdiction. These have been modified/clarified from time to time. These do not violate the mandate of Section 433-A.

(39) In view of the above, we find no merit in these petitions. Resultantly, both the petitions are dismissed. However, there will be no order as to costs.

R.N.R.

Before R. S. Mongia & K. C. Gupta, JJ
GUNEETA CHADHA & OTHERS—*Petitioners*
Versus
UNION OF INDIA & OTHERS—*Respondents*
C.W.P. No. 5758 of 1998
11th December, 2000

Constitution of India, 1950—Art. 226—Punjab Subordinate Education Service Rules, 1937 (as replaced by 1976 Rules)—

Chandigarh Educational Service (Group 'B'Gaz) Government Arts and Science College Rules, 1990—Rl. 4—Appointment of the petitioners as lecturers against vacant posts—Posts existing & vacant prior to promulgation of the 1990 Rules —Whether such vacancies which occurred prior to amended Rules 1990 would be governed by the 1937 Rules—Held, yes—The posts which are vacant prior to the amendment of rules have to be filled in accordance with unamended rules—Writ allowed holding the petitioners to be treated as having been regularly appointed as Lecturers w.e.f. the dates of their initial recruitment with all consequential benefits.

Held that the petitioners' recruitment having been done by following the due procedure under the 1937 Rules (which is not disputed), the petitioners appointment for all intents and purposes were regular in nature. In the appointment letter, the mention of the word "ad hoc" was a misnomer and under the erroneous belief that to such vacancies the 1990 rules were to be made applicable. The date of appointments would not matter but the date of occurrence of vacancy would be the *sine qua non*. The petitioners are entitled to be considered regular from the date of their appointment.

(Para 24)

Further held, that merely because process of selection and recruitment in case of Lecturers mentioned in Annexure p-7 and Madhurima Sharma had started prior to 21st February, 1991 (the date of promulgation of 1990 Rules), would not make any difference. The appointments in both the cases were made after the promulgation of the Rules. The *sine qua non* is the date of vacancy. The posts which are vacant prior to the amendment of the Rules have to be filled by the unamended Rules. In these circumstances as to when did the process of recruitment started pales into insignificance. The petitioners were entitled to be regularised in the same terms as Lecturers in Annexure p-7 as also Madhurima Sharma.

(Para 27)

P. S. Patwalia,—*Advocate for the Petitioners.*

K. K. Goel,—*Advocate for Respondent No. 1*

Rajan Gupta,—*Advocate for Respondent Nos 2 and 3.*

JUDGMENT

R. S. Mongia, J.

(1) This writ petition is confined to sixteen petitioners other than petitioners No. 12 and 15, who have since resigned from their job as Lecturer.

(2) Prior to the reorganisation of the State of Punjab on 1st November, 1966, the post of Lecturer in all the Colleges in the erstwhile State of Punjab was class III post and the appointment/recruitment to the said post was governed by the statutory rules known as Punjab Subordinate Education Service Rules, 1937 (hereinafter called 'the 1937 Rules'). The Lecturer being a class III post did not fall within the purview of the Punjab public Service Commission. On reorganisation of the State of Punjab on 1st November, 1966, and on the formation of the U.T. Chandigarh, 1937 Rules continued to remain in force and operation in the U.T. Chandigarh by virtue of the provisions of Section 88 of the Punjab Reorganisation Act, 1966. Appointments were made in U.T. Chandigarh against the post of Lecturer under the 1937 Rules on regular basis by treating the post of Lecturer as class III post. The appointments under the 1937 Rules were made after the same were notified to the Employment Exchange and /or advertisement in the newspapers. The selection was made by a selection committee constituted under the 1937 Rules consisting of Education Secretary, D.P.I. (Colleges), Experts in the subject and the Principal of the College concerned.

(3) In the State of Punjab, the 1937 Rules were replaced by 1976 Rules and the post of Lecturer under the 1976 Rules were treated as a class II post. Consequently, the recruitment to the post of Lecturer in the State of Punjab after 1976 was to be made through the Punjab Public Service Commission. It may be observed here that there was no corresponding amendment by the U.T. Chandigarh and the post of Lecturer continued to be class III post. Despite this it seems that the U.T. Chandigarh started treating the post of Lecturer to be a class II post even though the Lecturers thereafter were being recruited following same procedure as in 1937 Rules but in the appointment letters it was being mentioned that the appointment of the Lecturer was '*ad hoc*' and such an appointment would continue till such time the regular recruitment was made through Union Public Service Commission (in short 'UPSC').

(4) Some Lecturers who had been appointed in U.T. Chandigarh during the period 1985 and 1986 filed Writ Petition (Civil) No. 368 of 1987 directly in the Supreme Court under Article 32 of the Constitution of India. The same was titled as Dr. Gagan Inder Kaur and others v. U.T. Chandigarh and others. Dr. Gagan Inder Kaur and others claimed that though their appointments had been described as *ad hoc* appointments, yet they were entitled to be treated as regular Lecturers in the College cadre w.e.f. the date they were recruited and appointed. The writ petition was allowed by the apex Court on 17th October, 1995. Copy of the judgment has been appended as Annexure P-1 with the written-statement of the U.T. Before making reference to the judgment of the apex Court in Dr. Gagan Inder Kaur's case, it may be observed here that on 21st February, 1991, the Chandigarh Administration published in the Gazette a notification, dated 14th September, 1990, notifying Rules whereby the Chandigarh Administration for the first time declared the post of Lecturer to be class II post with retrospective effect from 1st April, 1975. These rules are known as Chandigarh Educational Service (Group 'B' Gaz.) Government Arts and Science College Rules, 1990 (hereinafter called 1990 Rules). Apart from conferring class II status to the post of Lecturer w.e.f. 1st April, 1975, the mode of recruitment and qualifications were given in rule 4 of the 1990 Rules. After making the 1990 Rules and prior to their publication in the Gazette, a letter dated 9th January, 1991, was addressed by the Education Secretary, Chandigarh Administration, to UPSC wherein after referring to the rules it was stated as under :—

“You were earlier requested to consider the cases of regularisation of service of the *ad hoc* Lecturers appointed by the Chandigarh Administration in various Government Colleges for which this Administration has already placed requisition with your office,—*vide* this Administration Letter No. DPI-UT-C2-12 (170) 83, dated 21st April, 1988. A further request was made,—*vide* this office letter of Even No. dated 29th November, 1988 for the relaxation of the age in respect of *ad hoc* Lecturers to the extent of their service subject to a maximum of 10 years. They were appointed on the basis of recommendation by Selection Committee which includes an Expert from the Panjab University, Chandigarh. These Lecturers fulfil the qualifications prescribed by UGC. There are now 123 Lecturers working with the Chandigarh

Administration and most of them are working for the last 6-7 years. A considerable hardship would be caused in case their services are terminated now. Some of them have become overage and are not likely to get employment elsewhere. You are, therefore, requested kindly to consider the claim of these Lecturers for regularisation of their services and convey your decision in the matter at the earliest.”

(5) The aforesaid letter has been noticed by the apex Court in the judgment of Gagan Inder's case. The apex Court noticed the argument of the learned counsel for Gagan Inder and others in the following terms :—

“Shri P. K. Goswami, the learned senior counsel appearing for the petitioners, has submitted that since the appointment of the petitioners (and other persons similarly situate) on the post of Lecturer was made in accordance with the procedure that was followed for regular appointment on the post of Lecturer under Punjab Rules of 1937, which were in force at that time, the appointment of the petitioners should be treated as regular appointment even though in the letter of appointment it is described as being *ad hoc* in nature. In support of this submission, Shri Goswami has also pointed out that the petitioners have been given salary, increments, housing allowance, housing facilities, medical leave, maternity leave, leave travel concession, ex-India leave, long leave, earned leave and other pre-requisites/facilities of service while they have been working as Lecturers ever since appointment. It has also been submitted that many of the Lecturers, who have been described as Lecturers appointed on *ad hoc* basis, have been discharging the duties of Head of Department in their respective departments of the colleges in which they are working and are performing various duties of Registrar (Examination) and others, which posts are meant to be filled by Lecturers with at least 10 years experience. These facts are set out in the additional affidavit of Kanwaljeet Kaur Dhillon filed on behalf of the petitioners and have not been controverted by the respondents.”

(6) The apex Court after noticing the provision of the 1990 Rules that status of class II post had been conferred on the Lecturer with retrospective effect from 1st April, 1975, held as under :—

“In view of the facts mentioned above, it appears that the ‘appointment of the petitioners and other Lecturers in the Union Territory of Chandigarh, who were appointed on *ad hoc* basis during the period 1977 till the publication of the 1990 Rules, though described as an *ad hoc* appointment, is really an appointment on regular basis made in accordance with the procedure that was required to be followed for making a regular appointment under the Punjab Rules of 1937 which were in force at that time. The said appointments have been described as being *ad hoc* in nature on the erroneous impression that consultation with the UPSC was necessary after 1977 for making regular appointment on the post. Since the Punjab Rules of 1937 had continued in force, consultation with UPSC was not required for the post of Lecturer which continued to be a class III post till the publication of the 1990 Rules on 21st February, 1991. It is no doubt true that as a result of the retrospective effect given by Rule 1 (iii) of the 1990 Rules Class II status (Group B) has been conferred on Lecturers with effect from 1st April, 1975 and as a result the post of Lecturer has to be treated as Class II post with effect from 1st April, 1975 and the said post has come under the purview of the UPSC by virtue of the UPSC (Consultation) Regulations, 1958, which only exclude Class III and IV posts from the purview of the UPSC. The said retrospective amendment cannot, in our opinion, have the effect of depriving the petitioners of their right of having been substantively appointed on the post of Lecturer prior to the coming into force of the 1990 Rules on 21st February, 1991. Since we are of the opinion that the appointment of the petitioners on the post of Lecturer was made under the Punjab Rules, 1937, which were in force at that time, and the said appointment, though described as being *ad hoc* in nature was a regular appointment, the petitioners and other Lecturers similarly situate would not be affected by the retrospective effect given by Rules 1 (iii) of the 1990

Rules so as to require the appointment of the petitioners to be regularised in consultation with the UPSC.

The writ petition is accordingly allowed and it is directed that the appointment of the petitioners and other Lecturers similarly situate who were appointed prior to the publication of the 1990 Rules on 21st February, 1991, though described as being *ad hoc* in nature shall be treated as a regular appointment and the said Lecturer shall be given the benefits accruing to them on that basis. We do not express any opinion as regards appointment on the post of Lecturer that were made after coming into force of the 1990 Rules on 21st February, 1991. No costs."

(7) Before coming to the facts regarding the petitioners it may be observed here that on 9th December, 1990, certain posts of Lecturer were advertised by the U.T. Administration. The academic qualifications, which were mentioned in this advertisement, were the same as in the 1990 Rules, which published in the gazette on 21st February, 1991. Interviews were held on different dates but for the posts of Lecturer in Zoology and Botany interviews were held on 23rd February 1991, and 10th March, 1991, i.e., after the publication of the 1990 Rules in the gazette on 21st February, 1991. All Lecturers selected by the Selection Committee were given appointment after 21st February, 1991.

(8) By way of different advertisements issued after 21st February, 1991, the petitioners were also appointed as Lecturer in different subjects and on different dates. It is the case of the petitioners that the qualifications which were advertised for the different posts were not the one mentioned in 1990 Rules but were those qualifications which had been recommended by the U.G.C. On being selected after following the same selection procedure as in Gagan Inder Kaur's case the petitioners were issued appointment letters. However, in the letters of appointment it was mentioned that the appointment was on *ad hoc* basis or till regular appointments were made through the UPSC on regular basis. The letter of appointment of one of the petitioners (Guneeta Chadha) dated 11th October, 1991, has been appended as Annexure P-2. The dates of appointments of the petitioners and the subject in which they

were appointed are mentioned below :—

Petitioner No. 1	16-10-91	Fine Arts
Petitioner No. 2	14-10-1991	Defence Studies
Petitioner No. 3	1-12-1992	Physics
Petitioner No. 4	7-1-1993	Chemistry
Petitioner No. 5	15-1-1993	Do
Petitioner No. 6	16-1-1993	Sanskrit
Petitioner No. 7	Do	Chemistry
Petitioner No. 8	Do	Do
Petitioner No. 9	Do	Sociology
Petitioner No. 10	8-2-1993	Commerce
Petitioner No. 11	17-2-1993	English
Petitioner No. 13	26-5-1993	Do
Petitioner No. 14	2-7-1993	Geography
Petitioner No. 16	18-7-1993	English.
Petitioner No. 17	4-10-1993	Sanskrit
Petitioner No. 18	22-3-1994	History

(9) It may further be observed here that on 17th May, 1993, the Chandigarh Administration recommended the case of the petitioner for regularisation of services to the UPSC. The recommendations read as under :—

“From

The Education Secretary,
Chandigarh Administration.

To

Sh. S. K. Arora,
Under Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.
Dated, Chandigarh the 17th May, 1993.

Sub. : Regularisation of *ad hoc* appointment to the post of Lecturers in various Government Colleges under the Chandigarh Administration.

Sir,

I am directed to letter No. F-4/32(i)91-AU2, dated 24th September, 1991 on the subject cited above and to state that the matter regarding regularisation of *ad hoc* appointments to the post of Lecturers in various Government Colleges under Chandigarh Administration was referred to the Department of Personnel and Training, Ministry of Home Affairs, New Delhi,— *vide* letter No. DPI-UT-C2-3666-12(171) 84, dated 17th January, 1992 (copy enclosed). The Director, Ministry of Personnel, Public Grievance and Pension Department of Personnel and Training, New Delhi,—*vide* their letter, dated 25th February, 1992 has desired to put up the case of regularisation of these Lecturers as one time measure in relaxation of rules notified on 19th October, 1990 (copy enclosed) before the Union Public Service Commission, New Delhi, for consideration. Accordingly, the case for regularisation of *ad hoc* lecturers (Group 'B') who have completed one year service as on 31st March, 1993 is submitted narrating the factual circumstances resorting to recruit lecturers on *ad hoc* basis in the ensuing paras.

2. The college Cadre Lecturers (Class-III) during the year 1967 to 31st March, 1975 were appointed on regular basis by the duly constituted Selection Committee in accordance with the relevant provisions of the Punjab Education Service (Class-III) Rules, 1937 as applicable to Union Territory, Chandigarh by virtue of Sections 88 and 89 of the Punjab Reorganisation Act, 1966 and in consonance with the Punjab University Regulations. On revision of pay scales in 1977 and as per U.G.C. pattern adopted by the State of Punjab w.e.f. 1st January, 1973, the Government of Punjab granted Class-II status of all lecturers w.e.f. 1st April, 1975. Accordingly, treating all lecturers as Class II on Punjab Pattern, w.e.f. 1st April, 1975 no regular appointment of lecturer was made by the Chandigarh Administration after 1977. In order that the instructional work in the College of Chandigarh Administration resorted to recruit Class-II lecturers on *ad hoc* basis under Regulation 4 of the Union Public Service Commission (Exemption from Consultation) Regulations in the public interest at large. All these lecturers used to be appointed during the period from July to September every year for one academic session were relieved by the end of March/April next year before vacations. The consultation with the UPSC was not felt necessary for making *ad hoc* appointments as the period was less than a year.

3. In the year 1983, 63 Lecturers filed a writ petition in the Supreme Court of India in its original Jurisdiction titled as Sagib Singh and others *Versus* Union Territory and through its Secretary and others,—*vide* C.W.P. No. 1551 to 1594 of 1984. The Supreme Court of India passed the order on 13th August, 1984 saying that the petitioners who were appointed on *ad hoc* basis will be continued in service until the Government, makes regular appointments on the recommendations of the Union Public Service Commission and in the meanwhile the petitioners will get their salary for the period of vacations. A copy of the order of the Supreme Court is also enclosed. Further in the case of Mrs. Gagan Inder Kaur and 15 others lecturers in S.L.P. 8656 of 87, the Supreme Court of India restrained the Chandigarh Administration from terminating the services of the petitioners, a copy of the Supreme Court order passed in S.L.P. No. 8656 is also enclosed.

4. In line with the above orders of the Supreme Court of India, the Chandigarh Administration has been appointing lecturers on *ad hoc* basis against the vacancies of duration of one year or more in the public interest at large and these lecturers are continuing on *ad hoc* basis continuously for the last 1 to 8 years. It is worth while to mention here that the case regarding recruitment rules relating to the post of lecturers in Union Territory Chandigarh had been shuttling between Chandigarh Administration and the Union Public Service Commission till 19th October, 1990 when these rules were notified. These *ad hoc* lecturers have been appointed by the competent appointing authority on the recommendations of the selection committee. All these lecturers fulfil the qualifications prescribed by the UGC/Punjab University when they were initially recruited except Mrs. Sharda Kaushik, Sr. No. 116 who obtained diploma from CIEFL, Hyderabad after joining the Department appointed after giving her relaxation in age. This Administration placed requisition with the Union Public Service Commission from time to time for advertising the post of Lecturers to be appointed on regular basis but these were not entertained in the absence of recruitment rules which were notified on 19th October, 1990.

5. Obviously, these *ad hoc* lecturers (Class-II) are continuing as such for more than about 1 to 8 years continuously in view of the ruling of the Supreme Court of India. Since all these lecturers were appointed by the competent appointing authority on the recommendations of the duly constituted selection committee as they fulfil the qualifications prescribed by the Punjab University/UGC and

now most of them have become over age. It is imperative that the services of all these *ad hoc* lecturers are regularised as one time measure in relaxation of the recruitment rules notified on 19th October, 1990. Accordingly, you are requested to accord necessary approval to regularise the service of all the *ad hoc* lecturers who have completed about 1 to 8 years service as a one time measure in relaxation of Chandigarh Education Service (Group B Gazetted) Rules, 1990.”

(10) The UPSC, however, did not agree to accept the recommendations of the Chandigarh Administration.

(11) The petitioners filed OA No. 620/CH/97 before the Central Administration Tribunal, Chandigarh Bench, for getting the same relief as was granted to Gagan Inder Kaur and others by the apex Court,—*vide* judgment dated 17th October, 1995, to which detailed reference has already been made above. The following reliefs were sought by the petitioners before the Central Administration Tribunal :—

- “(i) To regularise their appointment to the post of Lecturers (College cadre), Union Territory Chandigarh from the date of their appointment ;
- (ii) To quash the rules known as Chandigarh Educational Services (Group B Gazetted), Government Arts and Science College Rules, 1990, as notified in Chandigarh Administration Gazette Extraordinary dated 21st February, 1991 in accordance with the orders passed by this Tribunal in the case of Sapna Nanda in OA No. 267-CH of 1991,—*vide* order dated 1st February 1994 being violative of the guidelines issued by the Government of India and the qualifications laid down by the University Grants Commission.
- (iii) To direct the respondents to apply the Punjab Rules of 1937 to the applicants and all those appointed till the matter regarding amendment of the recruitment rules as directed by this Tribunal in the case of Sapna Nanda stands finalised.”

(12) The Original Application was dismissed,—*vide* order dated 2nd April, 1998, copy annexure P-15. Hence the present writ petition.

(13) Before noticing and dealing with the arguments of the learned counsel for the parties, it will be apposite to notice some more facts. In terms of judgment of the apex Court in Gagan Inder Kaur's case (*supra*), the U.T. Administration,—*vide* order dated 25th January, 1996, regularised the services of as many as 117 *ad hoc* Lecturers who were appointed prior to the coming into force of the 1990 Rules. However, eight Lecturers, who were appointed after 21st February, 1991, (after the 1990 Rules were published) but in whose cases the process of selection had been initiated prior to the publication of Administration realised its mistake. Apart from two vacancies in Zoology in Government College, Sector 42, Chandigarh, there was one vacancy in existence in the Government College, Sector 11. Another order was issued one month later i.e. on 25th March, 1991, in which the words leave vacancy were deleted. While repelling the argument of the Administration, the Tribunal,—*vide* its judgment, dated 9th December, 1997, copy annexure P-9, held as under :—

“7. We do not find it possible to accept the contention of Respondents that even though a substantive vacancy existed since 3rd April, 1990, yet the applicant cannot be regularised along with other eight candidates only because the initial letter issued on 25th February, 1991 (Annexure A-2) is against a leave vacancy. It is despite the fact that the Chandigarh Administration issued a subsequent letter one month later on 25th March, 1991 (Annexure A2/A) deleting the word leave vacancy from the order. We find that the case of the applicant is not different from the other persons who were regularised by the Respondents by order dated 9th December, 1996 (Annexure A-8). Shri Sethi, Advocate for the respondents urged that since the initial appointment was against the leave vacancy, its character could not change subsequently and the applicant was not entitled to regularisation alongwith the eight other persons as the appointment was after the cut off date 21st February, 1991. We are unable to accept this distinction when the recruitment of the applicant was from the same advertisement by same Selection Committee and she was appointed though against a leave vacancy, but there was a post existing since 3rd April, 1990. The respondents have not rebutted this averment of the applicant either by filing documents or by production of original records before us. Moreover, as already discussed above, the

respondent Administration by an order issued one month later i.e. on 25th March, 1991 (Annexure A2/A) in continuation of their letter Annexure A-2 and on the representation of the applicant made the appointment "temporary and *ad hoc*".

- 8: In these circumstances, the application is allowed with a direction to the respondents that they will extend to the applicant the same benefit as extended to the other eight persons by their order dated 9th December, 1996 (Annexure A-8). This order will be complied with within a period of three months from the date of receipt of its order."

(14) As mentioned in the earlier paragraphs, before the 1990 Rules were published in the Government gazette on 21st February, 1991, the Chandigarh Administration had issued an advertisement on 9th December, 1990, for recruitment to the posts of 17 Lecturers in different subjects, two of them were for recruitment as Lecturers in the Home Science. One Mrs. Sapna Nanda filed Original Application No. 267 of 1991 in the Chandigarh Bench of C.A.T. challenging the said advertisement and the selection made pursuant thereto on the ground that the qualifications prescribed for the post of Lecturer in the advertisement were against the UGC guidelines duly adopted by the Government of India and the UT Administration. She had also challenged the Notification dated 21st February, 1991, promulgating the 1990 Rules on the ground that the qualifications prescribed in the Notification were those which had been advertised on 9th December, 1990, but the same were against the UGC guidelines. That OA was allowed by the Bench of the CAT on 1st February, 1994. Copy has been appended as Annexure R-2 with the written-statement. It may be observed here that the qualifications which were mentioned in the 1990 Rules and the one recommended by the UGC were different. The advertisement dated 9th December, 1990, as also the Notification dated 21st February, 1991, publishing the 1990 Rules were set aside in the following terms :—

- "8. In the light of what is stated above, we have no hesitation in coming to the conclusion that the impugned advertisement which appeared in the Tribune dated 9th December, 1990 (Annexure P-1) was not in conformity with the instructions of the Chandigarh Administrative itself as conveyed to the Director Public Instructions

(Colleges), Chandigarh Administration by the letter dated 26th February, 1990 (Annexure P-5) and as such was legally not sustainable. Therefore, this advertisement has to be quashed and consequently, the selection made in pursuance of that advertisement cannot be sustained. However, we would not like to pass any orders for taking the benefit granted to one of the two selectees who has served for a few months till he resigned in August, 1991 after his selection in February/March, 1991. Similarly, the Recruitment Rules, notified on 19th September, 1990 as at Annexure P-2 insofar as these do not prescribe qualifications for recruitment to the post of Lecturer as per guidelines issued by the UGC and conveyed by the Government of India and adopted by the Chandigarh Administration and as finally adopted by the Panjab University in the circular dated 18th May, 1990 (Annexure P-5) have to be held arbitrary and to that extent these rules are quashed. Here it may be mentioned that the notification dated 19th October, 1990 (Annexure p-2) by which Recruitment Rules were notified, was published in the Chandigarh Administration Extra ordinary Gazette only on 21st February, 1991. It is well settled that any Rules notified under proviso to Article 309 of the Constitution of India in the absence of any statute on the subject passed by the Parliament or the State Legislature as the case may be, are issued under the plenary powers of the Executive and have as such the force of Law. Such a notification unless published in the Govt. Gazette does not come into force. Even on this count, the interviews held on 19th December, 1990 prior to the Publication of the Notification containing the Recruitment Rules on 21st February, 1991, cannot be held to be legally sustainable.

9. In the light of the foregoing discussion, the OA is allowed in terms of the following directions:—

- (i) The advertisement which appeared in the Tribune dated 9th December, 1990 (Annexure p-1) insofar as it relates to prescribing qualifications for the post of Lecturer in Home Science is quashed and consequently, the selection made pursuant to this advertisement on the basis of interviews held on 19th February, 1991 is also quashed without,

however, affecting the appointment of one of the Lecturers in Home Science who functioned on selection as such from Feb./March, 1991 till he resigned on 8th August, 1991.

- (ii) The Chandigarh Educational Service (Group-B gazetted) Government Home Science College Rules, 1990 issued by Notification dated 19th October, 1990 and published in the Gazette Extraordinary of Chandigarh Administration on 21st February, 1990 (Annexure P-2) are quashed insofar as the qualification prescribed for recruitment to the post of Lecturer e.g. Lecturer, Home Science, does not prescribe the qualification as laid down by the Panjab University in its circular dated 18th June, 1990 (Annexure P-4), as extracted in para 5 at page 8.
- (iii) The respondents are directed to hold selection for the post of Lecturer Home Science (College Cadre) Chandigarh Administration provided, of course, that both the posts for which the selection was held in February, 1991 are lying vacant, on the basis of the qualifications prescribed by the Panjab University in the circular dated 18th June, 1990 (Annexure P-4) by necessary amendment in the Recruitment Rules referred to above as expeditiously as possible. We were informed by the learned counsel for the respondents that the proposals to amend these Rules on this point were sent to the Govt. of India about six months back. We, therefore, do hope that the decision of the competent authorities and the issue of the revised Notification should not now take more than 6 to 8 weeks.
- (iv) If the applicant applies for the selection to be held as in (iii) above, and if by that time she crosses the maximum age which may be prescribed in the relevant rules, her application shall not be rejected on the basis of over-age, if she was within the prescribed age limit when she was interviewed for the selection held in February, 1990."

(15) Though,—*vide* the aforesaid judgment the advertisement dated 9th December, 1990; and the Notification dated 21st February, 1991, publishing the 1990 Rules were quashed to the extent it laid down the qualification for the post of Lecturer in Home Science only

but qualifications of Lecturers in other subjects also suffered from the same vice as the guidelines of the UGC regarding qualifications had not been incorporated in the Rules. The UT Administration,—*vide* Notification dated 22nd December, 1997, published in the official gazette on 1st January, 1998, amended the Rules purporting to bring the qualifications of Lecturers in different subjects in conformity with the UGC guidelines. This amendment was again challenged before the C.A.T. by one Gian Chand,—*vide* OA No. 93-CH of 1999. The same was decided on 5th May, 1999, in the following terms :—

“11. In the result, we allow this OA; quash the Recruitment Rules (Annexure A-2) to the extent whereby they do not include the recruitment of ‘good academic record’ as one of the criteria for appointment to the post of Lecturer. Resultantly, the requisition/advertisement (Annexure A-12) dated 10—16th April, 1999 issued by the Chandigarh Administration to the UPSC stand quashed to that extent. Accordingly, the respondents are directed to take necessary action in the matter of recruitment to the post of Lecturer by incorporating in the said Rules (A-2) the eligibility criteria in all respects as prescribed by the UGC including the ‘good academic record’ and to consider all those candidates including the applicant who fulfil the eligibility criteria in terms of the UGC guidelines.

No costs.”

(16) It may be observed here that pursuant to the aforesaid judgment of C.A.T., the U.T. Administration had further amended the Rules,—*vide* Notification dated 17th January, 2000, published in the Chandigarh Administration Gazette dated 1st February, 2000.

(17) The following points were raised by the learned counsel for the petitioners :—

(i) The posts against which the petitioners were appointed on the dates mentioned in the earlier part of the judgment were vacant prior to the promulgation of the 1990 Rules on 21st February, 1991. These vacancies were required to be filled by the Rules earlier in force, i.e. 1937 Rules and consequently the petitioners’ case is covered by the judgment of the apex court in Gagan Inder Kaur’s case (*supra*).

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- (ii) The petitioners have been discriminated by not regularising them when Lecturers similarly situated who were appointed on *ad hoc* basis after 21st February, 1991, had been regularised,—*vide* order dated 10th December, 1996, copy annexure p-7, on the basis of the judgment in Gagan Inder Kaur's case. Similarly the C.A.T. had also ordered the regularisation of one Madhurima Sharma who had been appointed after 21st February, 1991.
- (iii) That the 1990 Rules had been struck down by the Central Administration Tribunal regarding the qualifications and unless the qualifications were amended, the Rules had become unworkable and in the eyes of law were a dead letter. In the absence of the 1990 Rules, the appointment to the post of Lecturer was required to be made under 1937 Rules.

(18) Learned counsel for the petitioners on point No. 1 submitted that it was specifically pleaded before the C.A.T. and it has also been pleaded in this writ petition that the posts against which the petitioners had been appointed as Lecturers were vacant prior to 21st February, 1991, i.e. prior to the promulgation of the 1990 Rules. This has not been denied by the respondents. Learned counsel drew our attention to paragraph 5 (x) of the Original Application filed before the C.A.T., in which the following averments were made :—

“That it is evident from the annexure that there were 370 sanctioned posts of the U.T. Administration for the post of Lecturers in Arts and Science Colleges under the Education department. These posts of 370 existed prior to the 1990 Rules and date of notification, i.e., February, 1991. Hence these posts were regular posts and the appointments against them were, therefore, regular. The petitioners have also been appointed against these very posts which existed prior to 1990 Rules. Hence the Rules 1937 are applicable to these 370 posts which existed prior to the coming of the 1990 Rules. In any case these 1990 Rules cannot be enforced as the same have yet to be amended.”

(19) The following reply was given by the Administration to the aforesaid averment :—

“In reply to para it is stated that with coming into force of recruitment rules notified on 21st February, 1991, the posts are to be filled in accordance with the provisions of rules as amended from time to time. this has no relevance to the plea that old posts are to be covered under old rules. As already submitted, University Grants Commission/Panjab University can amend in qualifications at any time and with the change of qualification, status of applicants cannot be changed and for all intents and purposes, they are Gazetted Group-B.”

(20) In this writ petition, the following averments have been made by the petitioners in paragraph 12 (iv) :—

“(iv) That further it is submitted that it was specifically averred by the petitioners in para 5(x) of OA that the posts against which they were appointed/recruited were in existence prior to the publication of 1990 Rules on 21st February, 1991. This fact was not denied by the Administration in its reply. It is now settled that the qualifications/conditions for recruitment which were applicable at that time when the vacancies came into existence are to apply to those vacancies. At the relevant time, 1990 notification did not exist. Therefore, on this ground also since the posts were in existence, prior to the enforcement of 1990 Rules would also be governed under the 1937 rules and the 1990 rules cannot be applied to those posts. Therefore, on this ground also, the petitioners are entitled to regularisation;”

(21) Reply of the Administration to the aforesaid averment is as follows :—

“12 (iv) That in reply to this sub-para, it is stated that with the coming into force of recruitment rules notified on 21st February, 1991, the posts are to be filled in accordance with the provision of rules as amended from time to time. This has no relevance to the plea that old posts are to be covered under old rules. As already stated, the University Grants Commission/Panjab University can amend at any

time the qualifications and the status of petitioners cannot be changed and for all intents and purposes, they are Gazetted Group-B”

(22) Learned counsel argued that from the above averments it is clear that the posts against which the petitioners were appointed were in existence and vacant prior to 21st February, 1991, when the 1990 Rules were promulgated and consequently, these posts had to be filled as per 1937 Rules were in existence prior to 21st February, 1991. In support of his contention, learned counsel cited two judgments of the apex Court reported as *Y.V. Rangaiah and others v. J. Sreenivasa Rao and others* (1), and *P. Ganeshwar Rao and others v. State of Andhra Pradesh and others* (2). On the other hand learned counsel for the respondents argued that the posts having been filled after the promulgation of the 1990 Rules on 21st February, 1991, and the process of filling these posts also having started after 21st February, 1991, the posts had to be filled as per the 1990 Rules and, therefore, petitioners were rightly appointed on *ad hoc* basis till regular appointments through the UPSC.

(23) After hearing learned counsel for the parties on this point, we are of the view that there is substance in the argument of the learned counsel for the petitioners. From the averments above, it is evident that there is no denial on the part of the Administration that the posts against which the petitioners were appointed were in existence and vacant prior to 21st February, 1991, i. e. promulgation of 1990 Rules. In *Y. V. Rangaiah's case (supra)*, the apex Court in para 9 of the judgment observed as under :—

“.....The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar, Grade II, will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occur prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

(1) AIR 1983 SC 852

(2) J.T. 1988 (3) S.C. 570

(24) Similarly in *P. Ganeshwar Rao's case (supra)* it was held that the vacancies which were in existence prior to the amendment of the Rules for direct recruits had to be filled by following the unamended rules. That being the position, according to us, the petitioners' recruitment having been done by following the due procedure under the 1937 Rules (which is not disputed), the petitioners' appointment for all intents and purposes were regular in nature. In the appointment letter, the mention of the word "*ad hoc*" was a misnomer and under the erroneous belief that to such vacancies the 1990 Rules were to be made applicable. According to us, the case of the petitioners is not different than the law laid down in *Gagan Inder Kaur's case*. In our view, the date of appointment would not matter but the date of occurrence of vacancy would be the *sine qua non*. The petitioners are entitled to be considered regular from the date of their appointment.

(25) Learned counsel for the petitioners on point No. (ii) argued that pursuant to the judgment of the apex Court in *Gagan Inder Kaur's case*, eight Lecturers whose names have already been given above were regularised,—*vide* order, dated 9th December, 1996, copy annexure P-7, w.e.f. the date of their initial appointment. These eight Lecturers had also been appointed after 21st February, 1991, i.e. the promulgation of the 1990 Rules. Similarly, the Central Administrative Tribunal had allowed the O.A. of one Mrs. Madhurima Sharma though she had also been appointed after 21st February, 1991. The petitioners had also been appointed after 21st February, 1991, therefore, they could not be treated differently than the Lecturers mentioned in Annexure P-7 as also Mrs. Madhurima Sharma. It was further argued that in 1988 as well as in 1993, the Chandigarh Administration itself had recommended to the UPSC for regularising the petitioners. Communications of the years 1991 and 1993 have already been reproduced above.

(26) On the other hand learned counsel for the respondents argued that in case of the Lecturers mentioned in Annexure P-7 their process of selection and recruitment had commenced before the promulgation of the Rules on 21st February, 1991. Similar is the case of Madhurima Sharma, Therefore the petitioners cannot equate their cases with the aforesaid Lecturers. So far as recommendations of the Chandigarh Administration are concerned, learned counsel submitted that despite the recommendations having been made, the UPSC did not agree to regularise the petitioners.

(27) After hearing learned counsel for the parties we are of the view that merely because process of selection and recruitment in case of Lecturers mentioned in Annexure P-7 and Madhurima Sharma had started prior to 21st February, 1991 (the date of promulgation of 1990 Rules), according to us, would not make any difference. The appointments in both the cases were made after the promulgation of the Rules. In our view the *sine qua non* is the date of the vacancy. As per the judgments of the apex Court referred to in point No. (i), the posts which are vacant prior to the amendment of the Rules have to be filled by the unamended Rules. In these circumstances as to when did the process of recruitment started pales into insignificance. The petitioners were entitled to be regularised in the same terms as Lecturers in Annexure P 7 (*Supra*) as also Madhurima Sharma. Apart from this the petitioners are working as Lecturers for the last about seven to nine years and have become over age now.

(28) So far as point No. (iii) is concerned, we have already referred to details as to how and to what extent the Central Administrative Tribunal had quashed the 1990 Rules. There is no doubt that so far as laying down of the qualifications in the 1990 Rules are concerned, the same were quashed twice by the C.A.T. firstly in Sapna Nanda's case on 1st February, 1994, and after the amendment was brought about again on 5th May, 1999, in Gian Chand's case (*supra*). Now the Rules have been amended on 17th January, 2000,—*vide* notification, dated 1st February, 2000. For the view we have taken on points No. (i) and (ii), we refrain ourselves from finally opining on this point though *prima facie* we are of the opinion that in view of the judgment of the apex Court in *State of Sikkim v. Dorjee Tshering Bhutia and others* (3), in the absence of the qualifications having been laid down by the Rules or by executive instructions, the 1990 Rules cease to be workable. However, as observed above, we are not finally opining on this point.

(29) For the foregoing reasons, we allow this writ petition, set aside the order of the Central Administrative Tribunal, dated 2nd April, 1998, copy annexure P-15, and hold that the petitioners are to be treated as having been regularly appointed as Lecturers with effect from the dates of their initial recruitment with all consequential benefits. There will be no order as to costs.

R. N. R.