in the course adopted by the Board. In fact none was pointed out by the learned Single Judge. Thus, we find that the learned Single Judge is not correct in his conclusions in finding points No. 2 and 4 in favour of the writ-petitioners. The judgment of learned Single Judge on these two points cannot be sustained for the reasons given earlier.

(8) The third point on which the learned Single Judge has up-set the selection is the participation of Mr. Saroya in the selection committee. On this point the writ-petitioners are on firm footing. The *viva voce* test is merely a subject of test. Mr. G S. Saroya is outsider. We do not know to what extent the opinion given by him weight with the selection committee, to what extent it affected in their decision in assessing individual merits and demerits of a candidate. Mr. Saroya is a rankstranger. No rule has been brought to our notice which permits the Board to associate an outsider with the process of selection. His participation in the process of selection makes the selection invalid. We maintain the judgment of the learned Single Judge on the ground that the selection of Labour Inspectors Grade II stands vitiated since the selection committee associated a stranger namely Mr. G. S. Saroya in the process of selection. With these observations, both the appeals (L.P.A. Nos. 87 and 233/86) are dismissed. However, we leave the parties to bear their own costs.

R.N.R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

STATE OF PUNJAB AND OTHERS,—*Appellants.*

versus

MEHANGA RAM AND OTHERS,—*Respondents.*

Letter Patent Appeal No. 740 *of* 1986.

January 12, 1989.

Constitution of India, 1950—Arts. 162 and 226—Work charged employees—Claim for regularisation—Administrators deciding in meeting to retain such employees with five years service working against government posts of regular nature by transferring them to

new hydel project—Minutes of meeting are not executive instructions—Rights created by such minutes not justiciable—Mandamus *cannot be issued to grant relief of regularisation—However, in the exercise of equity jurisdiction, Court directing absorption of such employees on certain conditions.*

Held, that we do not find that the minutes of the meeting and communications addressed by the Chief Engineer to the Superintending Engineer are in the nature of executive instructions falling within the ambit of Article 162 of the Constitution of India, 1950 and thus no writ of *mandamus* can be issued to the State. No right accrues to the writ petitioners to enforce it. Since the entire case of the petitioners hinges upon the alleged policy decision and on the communications addressed by the Chief Engineer to the Superintending Engineers and this having been held by us to be not justiciable the petitioners case must fail. They have no right much less a legal right for the enforcement of which they can maintain these writ petitions. (Para 7).

Held, that the Division Bench of this Court in Piara Singh and another *vs.* State of Haryana and others, 1988(4) S.L.R. 739 specifically excludes the applicability to Industrial workers. (Para 7).

Held, that the equitable course is that the State should take the retrenched employees in other projects or in service of the government according to the qualifications of each of the employees and their fitness. Such absorption of the retrenched employees shall be done within a period of six months from this day. If any relaxation of the age limit is necessary, that shall also have to be done before appointments. The retrenched employees also will be entitled to take into account the service rendered in the Anandpur Sahib Hydel Project in case they are appointed in pensionable jobs for the purpose of pension and other retirement benefits. However, it is made clear that any appointment made under this order shall be treated as new appointment for the purpose of seniority among the employees. This relief given is also without prejudice to the retrenchment and any other compensation, they may be entitled to under the provisions of the Industrial Disputes Act, 1947. The writ petitioners can approach the appropriate authority for redress of their grievance, if any, before the authorities under the Industrial Disputes Act. (Para 7).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice D. V. Sehgal passed in the above noted case on 30th May, 1986.

It is therefore, respectfully prayed that the appeal be allowed, the judgment of the learned Single Judge be set aside and the writ petition be dismissed with costs.

K. P. Bhandari A.G., Punjab with Ravi Kapoor Advocate, *for the appellants.*

J. C. Verma and Dinesh Kumar Advocates, *for the respondents.*

S. S. Nijjar, Advocate, *for respondents* 2, 5 *to* 10.

JUDGMENT

G. R. Majithia, J.—

(1) This judgment will dispose of Letters Patent Appeals No. 510, 633, 740 to 755, 778, 779 and 780 of 1986 and Civil Writ Petitions No. 2389, 4122, 4941 and 5054 of 1986, and 208, 490, 2505 and 3892 of 1987 and 1787 of 1988. Letters Patent Appeals No. 510 and 740 to 755 of 1986 have been preferred by the State against the judgment of the learned Single Judge dated May 30, 1986 whereby a writ of *mandamus* was issued to implement the policy decision adopted in the meeting dated December 17, 1974 appended as Annexure P. 2 to the Civil Writ Petition No. 718 of 1986. Letters Patent Appeals No. 633, 778, 779 and 780 of 1986 have been preferred by the workers against the same judgment of the learned Single Judge whereby their writ petitions were dismissed. The other Civil Writ Petitions have been filed by the workers for issuance of writ of mandamus to implement the policy decision adopted in the meeting dated December 17, 1974. The pleadings in all these appeals and the petitions are substantially on the same pattern. We have treated Civil Writ Petition No. 718 of 1986 as the main writ petition. Therefore, for the sake of convenience, we will refer to the pleadings and the Annexures in Civil Writ Petition No. 718 of 1986 and whatever we say in regard to this writ petition (LPA No. 740 of 1986) would apply to all other appeals and writ petitions.

(2) The writ petitioners were working in various capacities in the Anandpur Sahib Hydel Project. They were appointed as workcharged employees. A policy decision was taken which was incorporated in the Minutes of the Meeting held on December 17, 1974 (Annexure P.2). It was decided in the meeting that the workcharged employees in all three branches of the Public Works Department who have completed five years' service or more and are working against the Government Posts of regular nature of maintenance works should be made regular. The decision was to take effect with effect from April 1, 1975. Communications were addressed by the Chief Engineer; Irrigation Works, Punjab to all the Superintending Engineers conveying to regularise the services of workcharged employees who had completed five years' service as workcharged employee on government post of regular nature. On February 1, 1984, a meeting was held between the Chairman of Punjab State Electricity Board, Chief Engineer and the representatives of the Workers in which it is stated that the Chairman of the

Punjab State Electricity Board gave an assurance that no worker is to be retrenched from Anandpur Sahib Hydel Project and on the completion of this Project, the surplus workers will be transferred to Mukerian Hydel Project. On the completion of Anandpur Sahib Hydel Project, Nangal, various categories of staff became surplus and their services were terminated giving rise to this writ petition. The writ petitioners maintained that in view of the policy decision taken in the meeting presided over by the Finance Minister, Punjab, held on December 17, 1974 and subsequent communications addressed by the Chief Engineer to the Superintending Engineers, their services ought to be regularised and the termination is without any legal sanction. The State in its reply *inter alia* pleaded that no termination notice has been issued to any workman working on the Anandpur Sahib Hydel Project with effect from 27th February, 1986 including the writ petitioners. The writ petitioners were engaged on Anandpur Sahib Hydel Project on purely temporary basis as work-charged employees. The Project was completed in January, 1985 and services of surplus work-charged employees were no longer required. Their services were terminable as per rule 20(1) read with rule 3(a) of the certified standing orders for work-charged staff on Anandpur Sahib Hydel Project on the completion of the Project. The services of the writ petitioners are regulated by the certified standing orders for work-charged staff. The policy decision adopted in the meeting held on December 17, 1974 is not applicable to the Writ petitioners since they were not engaged as work-charged employees against the government posts of regular nature of maintenance works in any of the three branches of the Public Works Department. The other communications addressed by the Chief Engineer to the Superintending Engineers are also not applicable to the writ petitioners. The learned Single Judge issued the following directions:—

> "(i) to abide by the Government policy decision adopted in the meeting dated 17th December, 1974 presided over by the Finance Minister, Punjab Annexure P-2, and treat the service of the petitioners as on regular basis with effect from 1st of April of the particular year following the date on which each of the petitioners completed continuous service of five years on the post that he is holding;
>
> (ii) to work out seniority list of all the employees holding posts on work-charge basis who are made regular as directed above for the entire department of Public Works,

Irrigation Branch and to absorb them on maintenance jobs on completion of the project concerned on the basis of the seniority.

(iii) after such absorption, to transfer employees who are found surplus to other projects which are in progress against existing vacancies or against posts manned by those who are junior to them i.e., whose continuous length of service is less;

(iv) to treat the service of those employees who are transferred to other projects as continuous to make it more explicit, the service rendered by them on the Anandpur Hydel Project shall count towards pay, seniority and other admissible benefits as regular employees.

(v) Only those employees who stand junior most in the overall seniority of the Punjab P.W.D. Irrigation Branch, shall be retrenched from No. 1804 of 1986 and the petitioners in C.W.P. Nos. 896, 1354, 1489, 1781 and 1888 of 1985 have admittedly less than five years service to their credit. As such no relief can be granted to them."

(3) The learned Single Judge understood the Minutes of the Meeting as policy decisions enforceable under article 226 of the Constitution of India by issuance of a writ of *mandamus*. The learned Single Judge was of the opinion that the executive instructions of the Government, in the absence of statutory rules, could be enforced by way of writ petition and he relied upon two decisions namely. *'Dr. Amarjit Singh Ahluwalia* v. *The State of Punjab and others'*, (1), *'Union of India* v. *K. P. Joseph and others,* (2). In Dr. Amarjit Singh Ahluwalia's case (supra), the Supreme Court has only held that in the absence of statutory rules, regulating recruitment or conditions of service, the State Government can in the executive power issue administrative instructions providing for recruitment and laying down conditions of service. In K. P. Joseph's case (supra), the Government of India, Ministry of Defence, issued a general order providing for certain benefits to ex-military personnel on re-employment on the basis of their length of actual military service. The Apex Court observed that the benefits accruing to

(1) 1975 SLJ 220.
(2) 1973 (1) SLR 910.

ex-military personnel on re-employment relates to conditions of service of the employees and could be enforced.

(4) It is difficult to appreciate how the ratio of these two judgments is applicable to the present case. Article 162 of the Constitution provides that executive power of a State "shall extend to the matters with respect to which the legislature of the State has the power to make laws." This article merely indicates the scope of executive power of the State; it does not confer any Rule making power on the State Government. The State can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. This matter came up for consideration before the Apex Court in a judgment '*G. J. Fernandez* v. *State of Mysore*, (3) under the following circumstances:—

> "Tenders were called for construction of right bank masonry dam called 'Hidkal Dam' by the Public Works Department, Irrigation Projects, of the State of Mysore. G. J. Fernandez also submitted his tender to the Chief Engineer of the Department. Respondent No. 3 before the Apex Court was another tenderer. The contract was granted by the Major Irrigation Projects Control Board to respondent No. 3. The appellant G. J. Fernandez challenged the grant of contract to respondent No. 3 on two grounds, namely (1) that the rule in the Mysore Public Works Department Code were not followed; and (2) that there was unequal treatment between the various tenderers which was in violation of Article 14 of the Constitution."

(5) The High Court negatived both these contentions, with regard to the submission with respect to provision of the Code having not been followed in the matter of tenders, the question arose whether the Code consisted of statutory rules or not The High Court of Mysore had held that the so called rules in the Code are not framed either under any statutory enactment or under any provision of the Constitution.

(3) AIR (1967) S.C. 1753.

They are merely in the nature of administrative instructions for the guidance of the department. The Apex Court proceeded to consider the question whether the instructions in the Code have any statutory force and held thus:—

> "It is not in dispute that there is no statute which confers any authority on the State Government to issue rules in matters with which the Code is concerned; nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules. It only provides for the extent and scope of the executive power of the State Government, and that coincides with the legislative power of the State Legislature. Thus under Article 162, the State Government can take executive action in all matters in which the Legislature of the State can pass laws. But Article 162 by itself does not confer any rule making power on the State Government in that behalf. We are therefore of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore, even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the court for quashing orders in breach of such instructions."

(6) Observations made in the same context in *The Tamil Nadu E.D.M & G.S.S.A., etc.* v. *State of Tamil Nadu and others,* (4) by V. R. Krishna Iyer J. is useful in this connection:—

> "In Service jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent

(4) 1980 Unreported judgments (S.C.) 282.

unconstitutional 'excesses', Judicial correction is not right. Under Art. 32, this court is the constitutional sentinal, not the national ombudsman. We need an ombudsman but the Court cannot make-do."

(7) We do not find that the Minutes of the meeting held on December 17, 1974 and the communications addressed by the Chief Engineer to the Superintending Engineer are in the nature of executive instructions falling within the ambit of Article 162 of the Constitution and thus no writ of *mandamus* can be issued to the State. No right accrues to the writ petitioners to enforce it. Since the entire case of the writ petitioners hinges upon the alleged policy decision and on the communications addressed by the Chief Engineer to the Superintending Engineers and this having been held by us to be not justiciable, the writ petitioners' case must fail. They have no right much less legal right for the enforcement of which they can maintain these writ petitions. The other arguments addressed by the learned counsel that the employees of the Anandpur Sahib Hydel Project were not similarly treated in other Projects is also of no consequence in view of our answer to the principal question. Mr. Nijjar appearing on behalf of the Workers, relied upon a Bench Decision rendered in *Piara Singh and another* v. *State of Haryana* and others (Punjab and Haryana), (5) to substantiate his plea that a work-charged employee who has put in more than two years' service is entitled to have his services regularised. The learned counsel did not appreciate that the judgment specifically excludes the applicability to Industrial Workers. However, having regard to the facts and circumstances of the present case, we think that the equitable course is the one that was followed by the Supreme Court in the decision in *G. Govinda Rajulu* v. *The Andhra Pradesh State Construction Corporation Ltd. and another*, (6). Following that decision, we direct the respondents to take the retrenched employees in other Projects or in service of the government according to the qualifications of each of the employees and their fitness. Such absorption of the retrenched employees shall be done within a period of six months from this day. If any relaxation of the age limit is necessary, that shall also have to be done before appointments. The retrenched employees also will be entitled to take into account the service rendered in the Anandpur Sahib Hydel Project in case they are appointed in pensionable jobs for the purpose of

(5) 1988 (4)S.L.R. 739.

(6) AIR 1987 (SC) 1801.

pension and other retirement benefits. However, it is made clear that any appointment made under this order shall be treated as new appointment for the purpose of seniority among the employees. This relief given is also without prejudice to the retrenchment and any other compensation, they may be entitled to under the provisions of the Industrial Disputes Act, 1947. The Act has set up suitable machinery for the adjudication of disputes which exist or are apprehended between an employer and his workmen. The mechanism of the Act is geared to conferment of regulated benefits to workman and resolution, according to a sympathetic rule of law, of the conflicts actual or protential between management and workman. One of the objects of the Act is to regulate conditions of employment. The writ petitioners can approach the appropriate authority for redress of their grievance, if any, before the authorities under the Act. With these observations, subject to reservations, the appeals filed by the State are allowed and the appeals and the writ petitions filed by the Workers are dismissed.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, AMRITSAR,—*Applicant.*

versus

VED PARKASH,—*Respondent.*

Income Tax Reference No. 31 *of* 1981

January 17, 1989.

Income Tax Act (XLIII of 1961)—*S.* 256—*Reference under S.* 256—*Jurisdiction of High Court—High Court has no power to declare any of the provisions of the Act* ultra vires *the Constitution.*

Held, that if the authorities under the Income Tax Act, 1961 are not possessed of the requisite jurisdiction to pronounce upon the constitutional validity of the provisions of that Act, no such jurisdiction can be deemed to have been conferred upon them merely on some other High Court having taken a contrary view with regard to their validity. There is an obvious inherent lack of jurisdiction in the Tribunal as also the High Court in a reference under S. 256 of the Act to examine and pronounce upon the constitutional validity of the said provisions. (Para 13).