

(2011) 08 P&H CK 0240

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11846 of 2011 (O and M)

Salil Sabhlok

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 17, 2011

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 3
- Constitution of India, 1950 - Article 124, 14, 142, 148, 153
- Criminal Procedure Code, 1973 (CrPC) - Section 195, 340
- Penal Code, 1860 (IPC) - Section 193

Hon'ble Judges: Pramod Kohli, J; Kannan, J; Hemant Gupta, J

Bench: Full Bench

Judgement

Hemant Gupta, J.

I. The reference to the Full Bench - the subject that requires full-fledged consideration 1. The present writ petition has been placed before this Bench on a reference made by a Division Bench of this Court in respect of the issues arising out of appointment of Respondent No. 4 as Chairman of the Punjab Public Service Commission (for short referred to as 'the Commission'). His appointment was challenged before a Division Bench of this Court just on the eve of the occasion for swearing-in ceremony. While ordering notice on the petition on July 13, 2011, the Court noticed the importance of the issues raised in the case and referred the matter observing, as follows:

6. Even though, Article 316 of the Constitution does not prescribe any particular procedure, having regard to the purpose and nature of appointment, it cannot be assumed that power of appointment need not be regulated by any procedure. It is undisputed that person to be appointed must have competence and integrity. Reference may be made to the judgments of the Hon'ble Supreme Court in [In Re: Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission](#), , [Ram Kumar](#)

[Kashyap and Another Vs. Union of India \(UOI\) and Another](#), and In re Mehar Singh Saini, Chairman, HPSC and Ors. (2010)13 SCC 586.

7. If it is so, question is how such persons are to be identified and selected and whether in the present case, procedure adopted is valid and if not, effect thereof. We are of the view that these questions need to be considered by a Bench of three Hon"ble Judges. Accordingly, we refer the matter to a Bench of three Hon"ble Judges.

2. Even before the case got underway through arguments, Mr. P.P. Rao, learned Senior Counsel, appearing on behalf of the State of Punjab, submitted that the questions of law as framed by the Division Bench do not arise for consideration as such questions stand concluded by the judgments of Supreme Court. This Full Bench shall therefore return the reference without any more adjudication. He stated that the Division Bench has, even while making a reference to the Full Bench, observed that the irregularities and illegalities pointed out by the Petitioner in the writ petition do not stand substantiated. Therefore, this Bench cannot frame new questions and the reference made by the Bench should be returned unanswered. Mr. Rao further sought to present at the threshold that the Public Interest Litigation challenging appointment of a person is not maintainable and that only an aggrieved candidate can challenge the appointment. We have maintained that the case required a full fledged discussion that cannot be short-circuited by a contention of non-maintainability of the reference as a preliminary point and urged the counsel to make their arguments on all the essential points brought out through their respective pleadings.

II. Array of parties; Suo motu Impleadment of parties and particulars that were sought from them

3. After reference to Full Bench, on 19.7.2011, we suo motu directed the impleadment of the State of Haryana and Haryana Public Service Commission, as issues common in respect of the States of Punjab and Haryana, were likely to arise. Both the States and their Public Service Commissions were directed to furnish the following information:

1. The number of posts filled up by respective Public Service Commissions in the last five years;
2. The number of posts which have been taken out of the purview of the Public Service Commission in the last five years;
3. Whether any Regulations have been framed in respect of the appointment of the Members and Chairman of the Commission.

III. Facts set forth in the writ petition that have given rise to the lis

(a) The personal attributes necessary for the high constitutional post

4. The Petitioner is an Advocate, practising before this Court and has filed the present petition as a public spirited person. It is, inter-alia, pleaded that the primary function of the Commission is to identify the most deserving candidates fit to be appointed to the Civil Posts through an identified procedure of selection. The recommendation of Commission is considered to be a final word in adjudging the merit of the candidates. The task of the Commission is important which requires expertise by qualified persons possessing outstanding capability and knowledgeable enough to identify deserving candidates for appointment. The backbone of the governmental functions depends upon its workforce and manpower, which is to be selected by the Commission. Keeping in view the critical, sensitive and the key function of the Commission, it is pleaded that it is very essential that Chairman and members of the Commission must possess outstanding and high degree of educational qualifications, brilliant and remarkable experience in the field of selection, administration and recruitment and also superior contribution in the field of education, which are the most desirable qualifications for appointment. of utmost importance, above all, are qualities of thorough integrity and his ability to work impartially without any political influence or exertion.

(b) Effect of lack of norms for the post; recent episodes betray unsavoury experiences

5. The Petitioner has pointed out that the State Government has failed to frame any guidelines laying down the educational qualifications, experience or even the procedure for selecting suitable candidates for appointment to the post of Chairman or member of the Commission. Reference has been made to recent incidents of corruption and mismanagement of the affairs of the Commission with the classic example of Mr. Ravi Pal Singh Sidhu. It has been pleaded that Mr. Sidhu after being appointed to the constitutional post of Chairman of the Commission, blatantly misused his position by carrying out recruitment to all classes of posts not by procedure of identification of merit, but by illegal gratification, which finds mention in the judgment of [Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others](#), . It is pleaded that after the aforesaid untoward instance, the State Government did not take a wakeup call to lay down educational and academic qualifications of outstanding nature and scout for talent among persons of high rectitude and integrity as yardsticks for appointment to the said constitutional post.

(c) The personal attributes and political predilections make the choice of the 4th Respondent unfit for the post

6. The Petitioner cites newspaper reports as the source of information that the name of Respondent No. 4 had been approved for his appointment of Chairman of the Commission upon the death of Mr. S.K. Sinha. It is pleaded that Respondent No. 4 was an Advocate, at Ludhiana before he ventured into politics. He was elected as a member of the legislative assembly on the ticket of the present ruling party. He was in charge of the special Committee of Punjab Vidhan Sabha, which was constituted

to probe the role of former Chief Minister of the State of Punjab. The report of the Special Committee headed by Respondent No. 4 was accepted, leading to expulsion of the former Chief Minister from the State Legislature. The said expulsion has been set aside by the Supreme Court in the judgment reported as [Amarinder Singh Vs. Special Committee, Punjab Vidhan Sabha and Others](#). It is also pointed out that in the year 1987, Respondent No. 4 as an attorney of his relatives moved an application to the Ludhiana Improvement Trust for allotment of plots under the Local Displaced Person Scheme. The allotment was found to be illegal and an FIR was registered against the said Respondent. Subsequently, civil suit was filed claiming allotment, which was dismissed by the trial Court. Another criminal case was registered in respect of offence of rape, in which the said Respondent managed to withdraw his name from the complaint. The Petitioner also relied upon an order dated 15.11.2007, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in a petition filed by Mr. Amit Misra, IFS, Divisional Forest Officer, Ropar. Mr. Amit Misra challenging his transfer on the ground of mala-fide attributed to Respondent No. 4. The Tribunal held that the transfer of the Officer was not due to any act of misdemeanour or complaints against him while functioning as DFO, Ropar and that the note recorded by Respondent No. 4 (Respondent No. 3 before CAT) gives away the state of mind in which he was after the incident of 22.6.2007 when he visited the aforesaid Rest House along with his family and was unable to use the same for the purpose of residence. Reliance was placed upon the following observation:

12. Even though the Government decided not to allow use of the Rest house as a permanent residence of the Chief Parliamentary Secretary, yet the applicant, being a junior officer became the victim of the annoyance of Respondent No. 3 and with his political influence, the Forest Minister initiated the proposal for his transfer from Ropar, which was approved by the Chief Minister.

After such observation, the Tribunal has set aside the transfer of Mr. Amit Misra. It is pointed out that such finding has attained finality.

7. It is pointed out by the Petitioner that the qualifications, experience and credentials of Respondent No. 4 do not reveal any outstanding qualities or brilliance either in academic attainments or administration, except the stature that his political affiliation to the ruling party secures to him. A person, who is a sitting MLA of a political party cannot in any manner be impartial or detached so as to discharge functions as Chairman of the Commission.

IV. Facts brought through pleadings of the Respondents

(a) Information brought through the Punjab Governments' affidavits, pleadings; Admission of sorry state of affairs of PPSC's functioning and the recurrent episodes of sidelining the Commission

8. An affidavit has been filed on behalf of the Government of Punjab and another by Punjab State Service Commission. They disclose the information that 3012 posts have been taken out of the purview of the Commission from 1.7.2007 till date. It means that such posts which were required to be filled up by the Commission but the responsibility to fill such posts were not entrusted to it. The Commission has made recommendations in respect of 14 selections and of 628 posts. The Commission in its counter affidavit has stated that it is not contesting the relief sought by the Petitioner in public interest and would also affirm the view of the desirability of selection of Chairman/Members of the Commission from amongst the persons with impeccable integrity and intellect. It is stated as under:

5. That, however, due to certain considerations weighing with the successive State Governments, the confidence which is to be reposed in the Public Service Commission has been lacking. There has been exchange of correspondence as also litigation in regard to the independence of the Commission at various stages. It would be pertinent to mention here that at one time the selections for the Punjab Civil Service (Executive Branch) (Class-I) were referred to the Union Public Service Commission, but it was only after the reference was declined that the posts were referred to the Punjab Public Service Commission for selection. So much so that the State Government also amended the Rule 2(b) of the Punjab Civil Service (Executive Branch) (Class-I) Rules, 1976 on 17.10.2007 whereby the definition of Commission was provided to include the Union Public Service Commission, when asked to serve the need of the State of Punjab.

It is also pleaded that No. sufficient reasons have been given by the State Government for exclusion of posts from the purview of the Commission. Thus, the infrastructure of the Commission including the subject experts, examiners, members etc. is rendered redundant.

It is also pointed out that in respect of 1206 posts of Medical Officers, which have already been advertised by the State Government, the Commission was not even forwarded a proposal for withdrawal of the posts from its purview.

(b) Matters that are referred to the Commission, the details available through existing Regulations

9. Along with the reply, Annexure Rule 3/2 i.e. Regulations and Instructions Governing the Work of the Commission has been annexed. The Punjab State Public Service Commission (Limitation of Functions) Regulations, 1955, forms part of such compendium as Part II-B. Part II of the Said Regulations, contemplates that it shall not be necessary to consult the Commission on the suitability of candidates for initial appointment to Class III and Class IV services or posts and for initial appointments to services or posts enumerated in the Schedule 'A' thereto annexed. The said Regulations give few other categories in respect of which the consultation with the Commission is not necessary.

10. Part III of the said compendium contains the Instructions issued by the Punjab Government from time to time. Such instructions contemplate procedure to be observed by the Departments of the Punjab Government in their dealings with the Commission. Part III-B thereof provides for procedure for exclusion of posts/services from the purview of the Commission. It contemplates that individual proposal for taking out posts from the purview of the Commission would be processed by the Administrative Department concerned. After the Department had taken a tentative decision to take out certain posts from the purview of the Commission, the Department would obtain the views/comments of the Commission by making a self contained reference to the Commission. It further provides that on receipt of the comments/views of the Commission, the matter would further be examined by the Department concerned keeping in view the comments/views so received and the advice of the Department of Personnel and Administrative Reforms and if the department comes to a definite conclusion that the posts in question must be taken out of the purview of the Commission, the Department would take the matter to the Council of Ministers incorporating the advice of the Department of Personnel and Administrative Reforms in the Memorandum to be placed before the Council of Ministers. It is, thereafter, a decision will be taken to amend the Punjab Public Service Commission (Limitation of Functions) Regulations, 1955. Reliance upon such instructions, it is contended that numerous posts have been taken out of the purview of Commission in violations of the instructions so issued.

(c) Statement in defence by the 4th Respondent, his credentials

11. Respondent No. 4 in his short affidavit has stated that he never applied for or asked for appointment of the Constitutional post in question. He was asked to submit his Bio-Data and the same having been done, the appointment was made. He has resigned from the membership of the State Assembly on 6.7.2011 and the same has been accepted by the Speaker of Punjab Vidhan Sabha. He has also surrendered his licence to practice as an Advocate and also has resigned from the posts of Vice-President of the Shiromani Akali Dal as also the President of the Legal Cell of the Shiromani Akali Dal, as well as from the Primary Membership of the party. It is also pointed out that he was duly elected by the electorate as a member of the legislative assembly and appointed the Chief Parliamentary Secretary of the Punjab Government. He has been a practicing Advocate with a good standing at the Bar since 1982 and continued in active practice till 2007 i.e. till his election to the State Legislative Assembly. The party on whose ticket, he was elected reposed faith in him to be the President of the Legal Cell of the Party, Vice-President of the Party itself and also its Spokesperson. It naturally shows that those at the helm of affairs as also the electorate had faith in his abilities in public life and therefore, appointed him to these positions. It is also pointed out that he remained elected President of the District Bar Association, Ludhiana, which is the largest Bar of the State for seven terms. He was also elected as a member of the Bar Council of Punjab and Haryana for three consecutive terms of five years and also remained Chairman of the Bar

Council, Punjab and Haryana. He has attended all the 84 meetings of Punjab Vidhan Sabha with 100% attendance and participated in majority of debates. In respect of an FIR against the Chairman of the Improvement Trust, he has pointed out that he was an attorney of his uncle Brij Bhushan Rai, who happened to be an NRI and in that capacity, he was named in the FIR. After thorough investigation, No. challan was submitted against the said Respondent or his relative. In respect of FIR for the offence of rape, he has pointed out that his name was not mentioned in the FIR nor found mention in the report submitted in the Court. He has stated that he never applied nor aspired for the post in question. Rather, he was invited and offered the same and consent was taken.

(d) Affidavit of the Chief Secretary, Punjab - Bio data, the only material placed before the Governor for appointment

12. In a short affidavit filed by the Chief Secretary to Government of Punjab dated 8.8.2011, it has been stated that the material available on file regarding appointment of Respondent No. 4 as Chairman of the Commission is the bio-data of Mr. Dhanda and the certificate of resignation of the said Respondent from the Legislative Assembly. It is stated in the affidavit that apart from the aforesaid two documents, the file contains the advice of the Chief Minister of Punjab to His Excellency the Governor of Punjab. The bio-data, a copy of which was produced, reads as under:

- Harish Rai Dhanda son of Shri Kulbhshan Rai.
- Resident: The Retreat, Ferozepur Road, Ludhiana.
- Date of Birth: 15th May, 1960.
- Attained Bachelor in Arts from SCD Government College, Ludhiana, Panjab University, 1979.
- Attained Bachelor in Laws from Law College, Panjab University (1982).
- Registered with Bar Council of Punjab and Haryana as Advocate in 1982.
- Practiced Law at District Courts, Ludhiana from 1982 to 2007.
- Elected as President of District Bar Association, Ludhiana for seven terms.

The record further shows that Respondent No. 4 resigned from the membership of the Punjab Legislative Assembly on 6.7.2011, which was accepted on the same date and it was on 7.7.2011, notification appointing the said Respondent as Chairman of the Commission was published.

(e) Chief Secretary's letter to UPSC: Admission of Punjab State Public Service Commission's inefficacy and UPSC's refusal

13. The learned Counsel for the State of Punjab has produced a copy of the communication addressed by the Chief Secretary of the Punjab Government on 22.6.2007 to the Secretary of the Union Public Service Commission to take up the assignment of filling of posts by the said Commission. The said letter reads as under:

I am to inform you that the process of selection for appointment to the posts of Punjab Civil Service (Executive Branch) and Allied Group "A" State services is prescribed in the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976. Selection for the posts is as per the joint merit prepared on the basis of a joint competitive examination of the eligible candidates. However, in the past we have come across instances of serious irregularities and malpractices in the process of such selections. Resultantly, people have practically lost their confidence in the fairness and impartiality of the selection process.(Emphasis Supplied) The State Government is seriously concerned to ensure induction of the best available talent in these premier State Civil Services through a fool-proof and transparent system of selections. With this end in view, the State Government has decided to approach the Union Public Service Commission to make selections for the Punjab Civil Service (Executive Branch) and Allied Services through a joint competitive examination. As you know under Article 315(4) of the Constitution the Union Public Service Commission is authorized to accede to such a request of the State Government with the approval of the President.

I shall be grateful if the Union Public Service Commission favorably considers the proposal of the State Government for conducting a joint competitive examination for selection to the Punjab Civil Service (Executive Branch) and Allied Services and agrees to the same.

14. In response to the said communication, the Union Public Service Commission raised certain queries, which were responded by the State Government through its Chief Secretary on 22.10.2008, wherein it was mentioned as under:

(c) It is universally accepted that the members of the Public Service Commissions should be eminent personalities in various fields and disciplines. They should be people of impeccable integrity and known for their impartiality and conduct. As already mentioned in my earlier letter, in the past there have been judicially proved instances of grave irregularities and mal-practices in the process of various selections which led to numerous litigations in the Hon"ble High Court and the Hon"ble Supreme Court. Consequently, there has been No. competitive examination for recruitment to the Punjab Civil Service in the last about 7-8 years and as revealed in the Court cases a lot of refurbishing of the functioning of the Commission is required for conducting fair and unbiased selections. (Emphasis Supplied) The State Govt. is in dire need of PCS (Executive) Officers and Excise and Taxation Officers as these services provide the main functionaries in the field for the maintenance of Law and Order and for augmentation of the revenues of the State. It is because of the

urgency of the matter and for inducting best available talent to such services that the State Govt. has made the reference to the Union Public Service Commission.

The request of the State Government to the Union Public Service Commission to take up the assignment of recruitment processes were declined on 18.2.2008.

(f) Affidavit on behalf of Haryana Govt: Details divulge HPSC's difficulties

15. In the affidavit filled on behalf of the State of Haryana, it transpires that the Haryana Public Service Commission in the last five years has made recommendations in respect of 1323 posts. It also shows that vide notification dated 15.6.2005, Group B posts were taken out of the purview of the Commission and such Group B posts were again entrusted to the Commission only on 21.10.2008. It may be noticed that all the members and chairman of the Haryana Public Service Commission were suspended on 9.8.2008 and the strength of the Commission was increased. The posts, which were taken out of the purview of the Haryana Public Service Commission, are not substantial during the last five years. Similar is the reply filed on behalf of Respondent No. 6 i.e. Haryana Public Service Commission.

(g) II Administrative Reforms Commission report: Imperatives for selecting persons with talent; Reckoning of poor status of Public Service Commissions

16. Respondent No. 1 has also filed a short affidavit. In the said affidavit, 15th Report of the Second Administrative Reforms Commission regarding manner of appointment of Chairman/Members of the State Public Service Commissions has been attached as Annexure Rule 1/1. The Administrative Reforms Commission has observed that the steps should be taken to ensure that the persons of high standing, intellectual ability and reputation are selected as Chairman and Members of the Commission. The relevant extracts from the 15th Report of the Second Administrative Reform Commission (Annexure R-1/1), are reproduced as under:

2.5.3. In the early years of Independence, State Public Service Commissions throughout the country functioned well primarily on account of the fact that:

(a) There was objectivity in selection of competent and experienced people as Chairman and Members of the Commission. The government treated the Public Service Commission as a sacrosanct institution and the Chairman and Members were either very senior government servants (drawn usually from the ICS) or academicians of high standing in their field.

(b) The Commission enjoyed excellent reputation for objectivity, transparency and fairplay.

2.5.4 But in recent years, this Constitutional body has suffered extensive loss of reputation in many States, mainly on account of (a) charges of corruption, favouritism and nepotism in matters of recruitment (emphasis supplied) and (b) use of archaic processes and procedures in its functioning which leads to inordinate

delays. For example, the civil services examinations conducted by a State Public Service Commission take a minimum time period of one and half year to complete. In some cases, it may take even longer.

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2.5.6.3 The Article provides for two kinds of membership for this body. As far as possible, one half of the strength has to come from government service (serving or retired). But, the qualification needed, for this category has not been explicitly defined. On a plain interpretation of the words, nay person who has worked in the government for a period of ten years in any capacity is eligible to be appointed as the Chairman or a Member of the State Commission.

Often, junior employees have been appointed on this august body and have been given the onerous task of (a) making direct recruitment to regular Class I/II, posts under the State Government and (b) presiding over the meetings of the departmental promotion committees to clear senior level promotions. Weak on merit and professional ability, such appointees have not been able to do justice to their work.(Emphasis Supplied)

2.5.6.4 With regard to the second category of members, the situation is even more ambiguous. The Constitution does not stipulate any qualification for them. The appointees could be from any field and with any qualification. In practice, this distorts the entire selection process. Choice, often, is made in favour of persons who do not have the appropriate background, training or experience. Fair play and good traditions have thus become casualties (Emphasis Supplied).

As a result, there has been considerable erosion in the reputation and credibility of the Public Service Commission in some States. This issue was also discussed in detail by the first ARC and it made the following recommendations to improve their working and standards:

1. In making appointment to a State Public Service Commission the Governor should consult the Chairman of the Union Public Service Commission and the Chairman of the State Public Service Commission.
2. At least one member of the State Public Service Commission should belong to a different State.
3. The minimum academic qualification for membership of a Commission should be a university degree.
4. A member selected from among government officer should have held office under a State Government or the Union Government for at least ten years; and should have occupied the position of a Head of Department or Secretary to Government in a State or a comparable position in an institution of higher education.

5. Members selected from non-official should have practiced at least for ten years in any of the recognized profession like teaching, law, medicine, engineering, science, accountancy or administration.

2.5.6.6 The Commission is of the view that the intention behind creation of an autonomous Public Service Commission as a Constitutional authority was to create a body of achievers and ex-administrators who could select meritorious candidates for recruitment and promotion to various civil service positions under the State Government with utmost probity and transparency. There is need to take steps to ensure that only person of high standing, intellectual ability and reputation are selected as Chairman and Members of the Public Service Commission.

(h) Union's directives to States" to evolve norms for appointments to the Public Service Commissions

17. In the communication dated 22.8.2007 addressed to the Chief Secretaries of the State Governments on behalf of the Government of India, Ministry of Personnel, Public Grievances and Pensions, appended with the affidavit has conveyed the directions of the Hon"ble Supreme Court in [Ashok Kumar Yadav and Others Vs. State of Haryana and Others](#), and the recommendations of the Second Administrative Reforms Commission. It has been, inter-alia, communicated to the following effect:

While the Chairman and Members of a State Public Service Commission are appointed by the Governor of the State in terms of the provisions of Article 316 of the Constitution, the Constitution has reserved the right to remove the Chairman and members of any State PSC to the President only. So long as the Constitutional provisions are complied with at the time of appointment, a claim later on for their removal on the ground that their appointments had been made on extraneous considerations and they lack integrity, caliber and qualifications is difficult to be sustained. Therefore, academic worth, intellectual caliber experience at appropriate level and integrity are of relevance while making appointments as Chairman and Members of PSCs. The object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favoritism and Members in State PSCs play a crucial role in this regard.

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I would request that the contents of this communication may be brought to the notice of all concerned for information and compliance while initiating proposals for appointment of Chairman/Members in the State PSCs under Article 316 of the Constitution and/or proposals for their removal under Article 317 of the Constitution.

18. In another communication dated 2.12.2010, appended with the affidavit, again the Government of India, Departmental of Personnel, Public Grievances and

Pensions, has communicated with reference to the Second Administrative Reforms Commission, as under:

The values of independence, impartiality and integrity are the basic determinants of the Constitutional conception of the Public Service Commission. The Constitutional Scheme contained in Article 315 to 320 noticeably demonstrates not only the complete independence of the Public Service Commissions in discharge of their functions but also ensures complete security and protection of tenure to its Chairman/Members. A very cumbersome process has been provided by the Constitution for the removal of the Chairman and Members of the Commission on the ground of their misconduct/misbehavior. The working of the Commission and its Members has to be of impeccable integrity and rectitude. They occupy a unique place and position and utmost objectivity in the performance of their duties, integrity and detachment are essential requirements for holding these high Constitutional offices. The provisions of Article 316 of the Constitution do not laid down any qualification, educational or otherwise, for appointment to the PSCs as Chairman/Member. Similarly, No. specific experience of any number of years has been provided in the Constitution for appointment as a non-official Member in the PSCs.

V. Scope of reference and the issues that are taken up for adjudication

19. Firstly, it is required to examine the scope of reference and the field that this Bench could traverse to return the issues raised in the reference. This would include the question whether this Bench can modify the questions so as to render opinion on all the allied and ancillary issues of law arising in the petition on the basis of arguments raised. The jurisdiction of this Bench shall be to opine on all ancillary and allied issues arising for decision on the subject of reference and the arguments raised thereon. The jurisdiction of the Larger Bench to give opinion on the pure questions of law, cannot be said to be restricted or curtailed, in any manner in any of the judgments referred to by the learned Counsel for the Respondents. None of the judgments restricts the right of the larger Bench to reframe and/or modify the questions framed. In fact in [Saguib Abdul Hameed Nachan Vs. State of Maharashtra](#), the Supreme Court has noticed such jurisdiction when it observed:

14. Mr Akhil Sibal strenuously contended that after answering the reference, the Full Bench, without giving notice to the counsel, without affording any opportunity to the parties and without considering the merits of the matter disposed of the main matter which is not warranted and permissible.

15. Generally, there is No. bar in deciding and considering the merits of the matter referred to the Full Bench. Normally, after answering the reference by the larger Bench, it is for the Reference Court to decide the issue on merits on the basis of the answers given by the larger Bench. In the case on hand, such recourse has not been followed by the Full Bench. The counsel for other Respondents have not seriously

disputed the grievance of the counsel for the Appellants herein. In the light of the assertion by the counsel and not having been seriously disputed by the other parties, we are of the view that now it is for the Division Bench to consider the claim of the parties on merits on the basis of the ratio in Navjot Sandhu case.

20. In *Kesho Nath Khurana v. Union of India and Ors.*, 1981(Supp) SCC 39 , relied by Mr. Rao, a question of law was referred by a Single Bench for the opinion of the Division Bench. The Division Bench not only answered the question of law, but decided the second appeal as well. The Court observed that since the question of law alone was referred for the opinion of the Division Bench, the appeal could not have been decided. Similar is the view taken in [T.A. Hameed Vs. M. Viswanathan](#), in which case the Full Bench decided the case on merits as well, while deciding the question referred to it. It was held by the Supreme Court that the Full Bench has No. jurisdiction to decide the main revision petition, as such revision petition was not referred to the Full Bench for decision. In [Kerala State Science and Technology Museum Vs. Rambal Company and Others](#), , the learned Single Judge referred the question of limitation to the Division Bench, but the Division Bench did not examine the said question and proceeded on a question whether there was breach of a condition of contract. It was in these circumstances, the Supreme Court observed that the Larger Bench cannot adjudicate upon an issue, which is not a question referred to.

21. In the present case, the basic issue is procedure in the matter of identification and selection of the candidates for appointment as Chairman and Members of the Public Service Commissions. The arguments of the parties have revolved around such questions alone. The questions debated before this Court arises directly from the questions of law as noticed by the Division Bench. This Court can reframe and modify the questions of law, for authoritative decision. Since the facts are not disputed, the jurisdiction of this Court to determine the questions of law cannot be curtailed on such narrow interpretation on the scope of the jurisdiction and powers of the larger Bench.

22. In view of the respective contentions of the parties, we find that our opinion is necessary on the basis of the formulations made in the reference and the arguments raised by Counsel for the parties arising out of the lis.

1. Whether the present petition is not maintainable as the questions raised are the concluded questions by the decisions of the Supreme Court?

2. Whether the present petition is public interest litigation in a service matter, and hence not maintainable on the said ground also?

3. Whether this Court can issue directions in the nature of guidelines for a transparent, fair and objective procedure to ensure that the persons of impeccable personal integrity, caliber and qualifications alone are appointed as the members /

Chairman of State Public Service Commission?

4. Whether in exercise of power of judicial review, it could be stated that the decision making process leading to the appointment of Respondent No. 4 as Chairman of Commission was arbitrary, capricious or violative of Article 14?

All the discussion above on the power to frame appropriate points for consideration may even seem academic, if we notice that the first two points are the questions raised on behalf of the State of Punjab regarding the maintainability of the reference itself. If the first two points give rise to a finding that the reference is maintainable, the other two points are an immediate fall-out of the reference itself: (i) to formulate a procedure for selection, if there exists none and to examine if the High Court has such powers and (ii) if No. such procedure existed, whether the appointment of the 4th Respondent was not arbitrary and consequently fell foul of Article 14.

VI. Constitutional provisions relating to appointment of Chairman and members of Public Service Commission

23. As a prelude to the whole discussion, to set the constitutional backdrop under which the whole edifice is built through this litigation, it is necessary to reproduce the provisions that constitute the central theme for our consideration. The Constitution does not provide for any qualifications or the eligibility criteria for appointment as Chairman or Members of the Commissions. It was left to the wisdom of the Governor who is to act on the aid and advice of the Council of Ministers. The Commission carries most important function of recruitment to posts under the state. In terms of sub clause (3) of Article 320 the State Public Service Commission is to be consulted on all matters relating to methods of recruitment to civil services and for civil posts, but by virtue of Regulations of 1955, Class III and Class IV, corresponding to Groups-C and D posts, have been excluded from the purview of the Commission,. To ensure that the members of the Commission are not influenced in any manner, the constitution has provided security of tenure to the members and that they shall not be appointed in any other employment under the State. The provisions of Article 316 and 320 of the Constitution of India, dealing with appointment and functions of the Commission read as under:

316. Appointment and term of office of members.- (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held

office under the Crown in India or under the Government of an Indian State shall be included.

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320. Functions of Public Service Commissions.-

(1) & (2) xx xx xx

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

.....

VII. Question No. 1

Whether the present petition is not maintainable as the questions raised are the concluded questions by the decisions of the Supreme Court?

24. Mr. Patwalia, learned Counsel for the Petitioner has argued that in Ashok Kumar Yadav's case (supra), the Supreme Court has impressed upon the State Governments that the Public Service Commissions should be manned by competent, honest and independent persons of outstanding ability and high reputation, who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merits. Such a view has been found expressed in the later judgments such as Re: [In Re: Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission](#), ; [Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others](#), and Re: Mehar Singh Saini, Chairman, HPSC and Ors. (2010)13 SCC 586 . It is contended that the pronouncements could not merely viewed as fond hopes but they must be construed as directives that the action of the Council of Ministers and/or Chief Minister in recommending Respondent No. 4 to the Hon"ble Governor for appointment as Chairman of the Commission does not satisfy the test of "institutional integrity" as laid down by the Supreme Court in [Centre for PIL and Another Vs. Union of India \(UOI\) and Another](#), . The personal integrity of the said Respondent is not such which can satisfy the minimum benchmark expected of the said office. The fact that the name of Respondent No. 4 appears in the FIR and in

civil litigation in respect of usurpation of public property and the fact that the allegations of mala-fide have been found substantiated by the Central Administrative Tribunal, are enough to infer that the personal integrity of Respondent No. 4 is not such as would be commensurate with the personal integrity expected of the Chairman of the Public Service Commission. It is contended that may be, Respondent No. 4 is good in winning election of the Bar, Bar Council and Legislative Assembly, but that does not make him eligible to discharge duties of the high constitutional post of the Chairman of the Public Service Commission, that demands purity and integrity of the administrative services. He is not shown to possess any high academic attainments or exceptional caliber or administrative experience which can justify his appointment. No. other person was considered and the entire process is believed to have been completed in a day. The appointment of Respondent No. 4 is evidently to reward him for his political contributions to the ruling party. It is contended that 25 years ago in Ashok Kumar Yadav's case (supra), the State Governments were directed to make appointments to the Public Service Commission of the persons of high integrity, caliber and qualifications. But such judicial exhortations have not been translated to State actions. Therefore, a stage has come, when this Court, should issue suitable directions so as to make the process of appointment of the Chairman/Members of the Commission fair, transparent and objective so that the candidates of high caliber, integrity and qualifications alone are appointed as Chairman/Members.

25. It is vehemently contended by Mr. P.P.Rao for the State of Punjab that the writ of mandamus for directing the Respondents to frame Regulation or guidelines in respect of the qualification, experience for the purpose of appointment of members of the Chairman/Members of the Public Service Commissions, cannot be granted in terms of the judgment of the Hon"ble Supreme Court in Re:Mehtar Singh Saini, Chairman, HPSC and Ors. (supra). He has made pointed reference to para 52 of the judgment that reads as under:

52. Desirability, if any, of providing specific qualification or experience for appointment as Chairman/Members of the Commission is a function of the Parliament. The guidelines or parameters, if any, including that of stature, if required to be specified are for the appropriate government to frame. This requires expertise in the field, data study and adoption of the best methodology by the concerned Government to make appointments to the Commission on merit, ability and integrity. Neither such expertise is available with the Court nor will it be in consonance with the constitutional scheme that this Court should venture into reading such qualifications into Article 316 or provide any specific guidelines controlling the academic qualification, experience and stature of an individual who is proposed to be appointed to this coveted office. of course, while declining to enter into such arena, we still feel constrained to observe that this is a matter which needs the attention of the Parliamentarians and concerned quarters in the Governments (emphasis supplied). One of the factors, which has persuaded us to

make this observation, is the number of cases which have been referred to this Court by the President of India in terms of Article 317(1) of the Constitution in recent years. A large number of inquiries are pending before this Court which itself reflects that all is not well with the functioning of the Commissions.

It is argued that the Supreme Court has noticed that the Courts do not have expertise to lay down guidelines in respect of academic qualification, experience and stature of a candidate to be considered for appointment as Chairman or Member.

26. On close analysis, we find the reliance on the observations of the Supreme Court does not lead to the inference that there is a binding precedent which debars this Court to examine the issue raised. The judgment in Mehar Singh Saini's case arises out of Presidential reference wherein the President has sought removal of Members and Chairman of the Commission. The issue of whether the Court was to frame any guidelines for appointments was not an issue at all before the Supreme Court. Mr. Patwalia points out that the precept that a reference court cannot travel beyond reference, as expounded by Mr. Rao, would apply a fortiori to Presidential reference. The Supreme Court was not exercising writ or appellate jurisdiction. The observations in the said case are in respect of academic qualifications, experience and stature of the candidates alone. There is no observation in any part of the judgment that the court can not issue any guidelines or instructions in respect of process of selection i.e. decision making process. In the aforesaid case, the charge No. 1 was that Mr. Saini was beneficiary of favouritism and nepotism in the matter of his appointment and not commensurate with his qualifications, experience, status and accomplishments. In support of said charge, the learned State Counsel before the Hon'ble Supreme Court has actually argued that if the constitutional provisions do not prescribe specific qualifications and experience, still the Supreme Court should lay down such qualifications and experiences keeping in view the high constitutional offices that the private Respondent held. The observations made in para 52 of the judgment are in response to the said argument. Though the Court could send the Presidential reference unanswered as in [Dr M. Ismail Fraugui and Others Vs. Union of India \(UOI\) and Others](#), , but in the present case, the issues arising cannot be said to be concluded issues in view of the further discussion hereinafter.

27. In Ashok Kumar Yadav's case (supra), the Court said that the best and the finest talent should be drawn in the administration and administrative services must be composed of men who are honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view the various factors which go to make up a strong, efficient and people oriented administrator. The Court observed to the following effect:

27.....This can be achieved only if the Chairman and members of the Public Service Commission are eminent men possessing a high degree of caliber, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them. We would therefore like to strongly impress upon every State government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merits.

The said directive was reiterated in *Re: Dr. Ram Ashray Yadav's case* (supra), when it was observed to the following effect:

4. Keeping in line with the high expectations of their and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and Members of Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and Members of the Commission, like Caesar's wife must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and Members of Public Service Commissions.

Still later in *Inderpreet Singh Kahlon's case I* (supra), the Court said to the following effect:

63. This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed) affect a very large number of people for a very long time, therefore, it is absolutely imperative that only people of high integrity, merit, rectitude and honest are appointed to these constitutional positions.

28. In *Mehar Singh Saini's case*, the Court noticed that it was the desire of the framers of the Constitution to ensure complete independence, integrity and fairness in the country's administration and that the Public Service Commissions are to maintain the purity and integrity of the country's service. The Court proceeded to observe as under:

4. Higher the public office, greater is the responsibility. The adverse impact of lack of probity in discharge of functions of the Commission can result in defects not only in

the process of selection but also in the appointments to the public offices which, in turn, will affect effectiveness of administration of State. Most of the democratic countries in the world have set up Public Services Commissions to make the matter of appointments free from nepotism and political patronage.

XXXXX XXXX

5. Great powers are vested in the Commission and therefore, it must ensure that there is No. abuse of such powers. The principles of public accountability and transparency in the functioning of an institution are essential for its proper governance. The necessity of sustenance of public confidence in the functioning of the Commission may be compared to the functions of judiciary in administration of justice which was spelt out by Lord Denning in *Metropolitan Properties Company v. Lannon*, (1968) 3 ALL ER 304, in following words:

Justice must be rooted in confidence; and confidence is destroyed when right minded people go away thinking: `The Judge was biased.

The conduct of the Chairman and Members of the Commission, in discharge of their duties, has to be above board and beyond censure. The credibility of the institution of Public Service Commission is founded upon faith of the common man on its proper functioning. Constant allegations of corruption and promotion of family interests at the cost of national interest resulting in invocation of constitutional mechanism for the removal of Chairman/Members of the Commission erode public confidence in the Commission.

29. In view of the aforesaid judgments, it could not be disputed nor has been disputed that the Chairman and members of the Commission have to be men of caliber, integrity and stature.

There is No. office memorandum or internal guidelines as to how a Chairman or Members is to appointed. We do not find that there is any prohibition in any of the judgments referred to by the Counsel for the Respondents to lay down the procedure for decision making process to ensure fair, transparent and objective selections to the coveted assignment. Such appointment can be made after adopting a fair, transparent and objective procedure so that best available talent is firstly appointed as Chairman and Members who in turn should ensure that the selected candidates discharge the functions of the State in proper and just manner. Therefore, we do not find that the present petition is not maintainable.

Question No. 2 Whether the present petition is public interest litigation in a service matter, and hence not maintainable on the said ground also?

30. The counsel for the Petitioner contended that the appointment of a member and the Chairman of the Public Service Commission is not "a service matter" and thus in respect of the same, the Public Interest Litigation is maintainable. It is contended that the expression, service matters, appears in Section 3(q) of the Administrative

Tribunals Act, 1985 and while examining such provisions, the Supreme Court in [Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.](#), has held that a Public Interest Litigation is not maintainable before the Administrative Tribunals. It was observed that the Administrative Tribunal has been constituted for the redressal of the grievance of a person aggrieved; therefore, the Public Interest Litigation cannot be entertained by the Tribunal by a person who is not a person aggrieved. It is contended that the challenge in the present writ petition is to the appointment of the Constitutional post and is, therefore, not a service matter. This line of argument is also supported by Mr. Hooda, the Advocate General appearing for the State of Haryana.

31. In [State of Uttaranchal Vs. Balwant Singh Chaufal and Others](#), the Hon'ble Supreme Court has noticed three phases of origin and development of public interest litigation. The Petitioner claims that third phase as identified by the Supreme Court clearly empowers this Court to issue suitable directions or frame guidelines so that the Chairman and Members of the Commission are men of high caliber, integrity and merit. It is argued that this Court is competent to issue suitable directions to give practical meaning to the Fundamental Rights. Reliance is placed upon the decision in [P.V. George and Others Vs. State of Kerala and Others](#), and [Employees State Insurance Corporation and Others Vs. Jardine Henderson Staff Association and Others](#),

32. On the other hand, relying on the decision in R.K. Jain v. Union of India, AIR 1993 Supreme Court 1769, Mr. P.P. Rao argued that the case prosecuted as a genre of Public Interest Litigation in a service matter, cannot be maintained. Reference was made to Balwant Singh Chaufal's case (supra); [Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others](#), and [Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others](#),

33. In R.K. Jain's case (supra), the challenge was to the appointment of the President of the Customs Excise and Gold Control Tribunal. It was held that the appointment of a senior most member cannot be challenged by a Public Interest Litigation. It is only in the proceedings initiated by an aggrieved person, it may be open to be considered. In service jurisprudence, it is settled law that it is not for the non-aggrieved person i.e. non-appointee, to assail the action.

34. Similarly in Dattaraj Nathuji Thaware's case (supra), a practicing lawyer had filed the public interest litigation before the Nagpur Bench of the Bombay High Court. The writ petition was dismissed holding that the Petitioner has resorted to black-mailing Respondent Nos. 6 and 7 and was caught red-handed accepting blackmailing money. The appeal filed by such lawyer was dismissed.

35. In still later judgment of Hari Bans Lal's case (supra), challenge was to the appointment of a chairman of the Jharkhand State Electricity Board. In a Public Interest Litigation challenging such appointment, the Jharkhand High Court

quashed the appointment. In appeal, it was held that except for a quo-warrantor, the Public Interest Litigation is not maintainable in service matter. For issuance of a writ of quo-warrantor, the High Court is required to be satisfied that the appointment is contrary to the statute. As a matter of fact, it was found that there was no violation of any statute and therefore the order of the High Court was set aside.

36. The first of the judgments holding that the Public Interest Litigation is not maintainable in the service matter was reported as Duryodhan Sahu's case (supra) and few other judgments such as Hari Bans Lal's and Balwant Singh Chauhan's case (supra). But the said judgments are not applicable to the facts of the present case. In Duryodhan Sahu's case (supra), the Court held that the Public Interest Litigation in service matter is not maintainable before the Administrative Tribunal for the reason that the Administrative Tribunal, has been constituted for the redressal of the grievances of the person aggrieved. The very purpose of the statute shall stand defeated if the public interest litigation is entertained by the Administrative Tribunal and more so, when the jurisdiction to issue the prerogative writs is conferred upon the High Courts alone. In Dattaraj Nathuji Thaware's case (supra), it was a finding of fact that the Public Interest Litigation is a petition to blackmail Respondent Nos. 6 and 7.

37. The question is whether the appointment to the post of Chairman and Member of the Commission is a "service matter". Mr. Patwalia, has rightly pointed out that the expression "service matter" appears only in the Administrative Tribunal Act, 1985 and such expression has to be construed in relation to the rights and obligations of the holders of the civil posts. The service matters are such that there is challenge to the service condition of the civil servants. In Public Interest Litigation, it is not open to claim better service conditions, higher pay scales or such like benefits for the holders of the civil post. In fact, the Supreme Court in Ram Kumar Kashyap's case (supra) and Mehar Singh Saini's case (supra), held that the principles of the service jurisprudence, are not applicable in respect of the post of the Members and Chairman of the Commission.

In Ram Kumar Kashyap's case (supra), the Court observed as under:

14. It is very clear that since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions.

38. In Mehar Singh Saini's case (supra), the Court did not employ the principles of criminal jurisprudence or the service jurisprudence in respect of the Presidential Reference for the removal of the chairman and members of the Commission. The Court observed as under:

Under the service jurisprudence a person may be found guilty even on the charge being proved on the basis of preponderance of probabilities while in the proceedings of the present kind, conduct of a person may amount to misbehavior requiring his removal under Article 317(1) of the Constitution on the basis of rule or reasonable preponderance of probabilities. This distinction is fully justified with reference to the constitutional scheme behind these provisions and the standards of performance and behavior that the holders of such office are required to maintain. In other words, the proceedings before this Court are neither akin to proceedings under service law nor criminal law. In fact, they are sui generis. That may be one of the reasons that the framers of the Constitution opted not to give power of removal of Chairman/Member of the Commission to any other person except the President of India, and that too, on the basis of a report of this Court.

After holding so, the Court proceeded to return the following finding:

In our view the maxim *Qui non prohibet quod prohibere potest facere videtur* would alter the equities against the private Respondents. As stated in *Re Ram Ashray Yadav (supra)*, absolute integrity and impartiality is required to be exercised by the Chairman and Members of the Commission to maintain the dignity of their office. The Commission has been entrusted with the task of selecting candidates to various posts under the Government and, therefore, the function of the Commission is of great importance. Most appropriately the words of Shri H.V. Kamath, Member of the Constituent Assembly, can be referred at this stage: "Whenever democratic institutions exist, experience has shown that it is essential to protect the public service as far as possible from political and personal influences and to give it that position, stability and security which is vital to its successful working as an impartial and efficient instrument by which the Government, of whatever political complexion, may give effect to their policies". These were the expectation of the framers of the Constitution from the Chairman and Members of the Commission.

39. In view of the said fact, we find that the Chairman or the Members of the Commission are not the persons holding civil posts governed by the service jurisprudence, but are required to be dealt with keeping in view the expectations and nature of duties assigned to them by the Constitution. Thus, this is not a Public Interest Litigation in a "service matter", so called, but the Public Interest Litigation in relation to the matter of appointment to constitutional post. Therefore, such Public Interest Litigation is maintainable.

40. The other limb of the argument of Mr. Rao is that there is No. violation of Law, which alone would entitle the Petitioner to claim a writ of quo-warrantor. Reliance is placed upon the decision in [The University of Mysore and Another Vs. C.D. Govinda Rao and Another](#), .Mr. Rao, also relied upon [B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees" Association and Others](#), , wherein the Supreme Court has held that the Court cannot sit in the judgment over the wisdom of the Government in the choice of the person to be appointed so long as the

person chosen possesses the prescribed qualification and is otherwise eligible for appointment.

Relying upon the said view, it is argued that it is not the case of the Petitioner that Respondent No. 4 is not possessed of any of the qualifications prescribed in Article 316 of the Constitution of India. Since in the matter of appointment of Respondent No. 4, there is no violation of law, a writ of quo-warranto cannot be issued.

41. We do not find any merit in the said argument. The judgments of various Courts have reiterated time and again the expectations from the constitutional bodies, such as the Public Service Commissions. The State Governments have been impressed upon to appoint persons of caliber, impeccable integrity and merit as Chairman and Members of the Commission. To ensure that the Chairman and the Members of the Commission are of impeccable integrity and caliber possessing adequate administrative experience, so as to select the best possible talent to man the civil posts under the State, the decision making process has to be transparent and objective to ensure that the best possible candidates are selected for the coveted assignments. A writ of quo warranto is maintainable where the appointment is against law. Such Law is not only statutory law but shall include the law as declared by the Supreme Court.

42. In *Centre for Public Interest's* (supra), the Court held that where the institutional integrity is in question, the touchstone should be public interest, which has to be taken into consideration by the High Powered Committee. It was observed that it should not be understood to mean that personal integrity is not relevant and that the personal integrity has certainly a co-relation with the institutional integrity. It was held that institution is more important than an individual. The Court has considered *Ashok Kumar Yadav's*; *R.K.Jain's* and *Hari Bans Lal's* cases (supra) and issued directions in respect of the decision making process. It was held that if one member of the High Powered Committee dissents, then that member should give reasons for the dissent and if the majority dissents, then the majority should give reasons for the same. This will bring about fairness in the action. The Court held that the legality on choice and selection is open to the judicial review and that if the said methodology is followed, transparency will emerge which will also maintain integrity of the decision making process.

43. In view of the above, the power of the Hon'ble Governor to appoint a person as Chairman or Member of the Commission on the aid and advice of the Council of Ministers, shall be such aid and advice, that is tendered after following a transparent decision making process that has properly laid down criteria and norms that go into making of the choice. Such transparent decision making process will bring objectivity and also ensure that suitable candidate is appointed, which will bring respect, credibility and confidence of the public desirous to seek appointments under the State Governments.

Question No. 3

Whether this Court can issue directions in the nature of guidelines for a transparent, fair and objective procedure to ensure that the persons of impeccable personal integrity, caliber and qualifications alone are appointed as the members / Chairman of State Public Service Commissions?

44. It is argued on behalf of the Petitioner that in numerous cases, the Hon"ble Supreme Court has issued directions, which are seemingly legislative in nature, such as in [Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.](#), [Vineet Narain and Others Vs. Union of India \(UOI\) and Another](#), and [Vishaka and others Vs. State of Rajasthan and Others](#), . Though in some of the aforesaid cases, while issuing such directions, references have been made to Article 142 of the Constitution, but they do not necessarily imply that they exclude the power of the High Court to issue suitable directions in appropriate cases. Article 142 provides that the Supreme Court "in exercise of its jurisdiction" may pass such decree or order for doing complete justice in any cause. Thus, it is argued that Article 142 is not the source of jurisdiction of the Court. The jurisdiction lies elsewhere. The exercise of jurisdiction of the Supreme Court can be original, civil or criminal appellate jurisdiction or any other jurisdiction conferred by the Constitution or by statute. It is contended that Article 142 does not permit the Court to ignore the substantive right of the litigant, while dealing with a cause pending before it. Reliance is placed upon [Supreme Court Bar Association Vs. Union of India and Another](#), and [M.S. Ahlawat Vs. State of Haryana and Another](#), .

45. It is contended that this Court, while exercising the writ jurisdiction under Article 226 of the Constitution of India, has power to issue a writ of Mandamus, Certiorari, Prohibition and Quo-Warrantor, to any person or authority, which power is not less, if not wider in scope than the writ jurisdiction of the Hon"ble Supreme Court under Article 32 of the Constitution. In exercise of such powers and to give effect to the law, which does not necessarily mean the statutory law, but also the law as declared by the Higher Judiciary, this Court should exercise jurisdiction particularly when in both the States, by the express showing in selections, performance and admissions of inefficacy by the respective State governments themselves, the Public Service Commissions have failed to gain the confidence in the candidates seeking appointment under the State. In Punjab more than 3000 posts have been taken out of the purview of the Commission whereas recommendation have been made in respect of 628 posts i.e less than 1/4th posts available for appointments in the last five years. On the other hand, in Haryana, the Group B were taken out of the purview of the Commission. The said posts were entrusted back to the said Commission after Chairman and all the members were suspended. The *raison d'etre* for not entrusting the selection to the Public Service Commission is that every successive government that wears a particular political hue does not trust the Chairman and the Members of the Public Service Commission, appointed by the

earlier Government steered by persons with different political affiliation. It is true for both the States of Punjab and Haryana. Still further from the information disclosed, selections to 919 posts were subject matter of challenge in Haryana. The selections to 404 posts were not challenged. Such large number of challenge before the courts shows the lack of confidence of the people on the fairness of selection procedure adopted by the Commission. As per Annexure R-3/A, selection of 312 posts of Medical Officers and one post of Director Ayurveda is subject matter of challenge, whereas challenge to the post of Senior Lecturer, Ophthalmology, remained unsuccessful and the interview criteria for the 13 posts of Drug Controllers were challenged, which was dismissed. In other words, out of 628 recommendations, 313 recommendations are subject matter of challenge before the Courts.

46. Bringing a doctrinaire support to the argument that a High Court as guardian of Constitutional law and its enforcer shall invoke its exemplar by meaningful interventions, it is argued that the constitution is dynamic, living document and flexible to mould itself to the changing requirements of the society so to meet out the aspirations of the citizens. Reference has also been made to [Supreme Court Advocates-on-Record Association and another Vs. Union of India](#), wherein it was held to the following effect:

321. The Framers of the Constitution planted in India a living tree capable of growth and expansion within its natural limits. It lives and breathes and is capable of growing to keep pace with the growth of the country and its people. Constitutional law cannot be static if it is to meet the needs of men. New situations continually arise. Changes in conditions may require a new-look at the existing legal concepts. It is not enough merely to interpret the constitutional text. It must be interpreted so as to advance the policy and purpose underlying its provisions. A purposeful meaning, which may have become necessary by passage of time and process of experience, has to be given.

The Courts must face the facts and meet the needs and aspirations of the times.

322. Interpretation of the Constitution is a continual process. The institutions created there-under, the concepts propounded by the framers and the words, which are beads in the constitutional-rosary, may keep on changing their hue in the process of trial and error, with the passage of time.

47. Mr. P.P. Rao has argued that though the Supreme Court has issued guidelines or directions pending legislation but such direction and orders are with the aid of Article 142 of the Constitution. It is argued that in all cases including Vineet Narain, Vishaka or others, the court has made reference of to Article 142 of the Constitution. This Court has No. analogous jurisdiction and hence, the directions which are legislative in nature cannot be issued by this Court. Mr. Rao pointed out that in [B.C. Chaturvedi Vs. Union of India and others](#), one of the Hon"ble judges observed that

the High Court has the power to do complete justice even in the absence of any provision analogous to Article 142 but such view was not approved in later judgment in [Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another](#), when it observed:

8. Learned Counsel also relied upon the earlier quoted observations made by Hansaria, J. in B.C.Chaturvedi's case. Really, they have No. relevance to the facts of this case. This is not a case where the High Court/Tribunal found any difficulty in granting an appropriate relief to Respondent 1 because of some technicality of rules or procedure even though justice demanded it. Moreover, the said observations are No. more than an expression of a personal view. What is to be noted is that Hansaria, J. agreed with what the other two learned Judges held as regards the powers of the High Court/Tribunal to interfere with the order of penalty passed by the disciplinary authority. Therefore, it would not be correct to say that this Court in B.C. Chaturvedi case has accepted the view that the High Courts/Tribunals possess the same power which this Court has under Article 142 of the Constitution for doing complete justice, even in the absence of such a provision.

48. Mr. H.S. Hooda, learned Advocate General, Haryana, submitted that in Mehar Singh Saini's case (supra), the Supreme Court was seized of the Reference made by the President of India, seeking removal of the existing Chairman and Members of the Haryana Public Service Commission under Article 317 of the Constitution. The first Article of Charge was that Mr. Mehar Singh Saini, was beneficiary of favouritism and nepotism in the matter of his appointment and that his qualifications, experience, status and accomplishments, were not of that a stature required for appointment to the constitutional post of the Chairman of the Haryana Public Service Commission. In the said judgment, the Supreme Court has held that the specific guidelines controlling the academic qualifications, experience and stature of an individual for appointment to the coveted post, cannot be laid down by the Courts. Since the specific charge framed has been dealt with by the Supreme Court, the same issue cannot be permitted to be raised by the Petitioner in the present petition. It is also argued that No. statute or guidelines can be framed so as to restrict the right of the Council of Ministers and/or Governor to appoint a suitable candidate as Chairman or Members of the Commission. It is contended that even if any appointment is made not in tune with the spirit of such statute or guidelines, the aggrieved person can only seek removal in terms of Article 317 and therefore, it shall be an exercise in futility to regulate the academic qualifications, experiences and stature, which cannot be given effect to, in view of the nature of the protection available to the appointees. This Court, in exercise of the writ jurisdiction cannot frame guidelines as such guidelines are not contemplated in Article 316 of the Constitution. It is contended that in Ashok Kumar Yadav's case (supra), there was No. direction to the State Government to frame guidelines, but the State Governments were impressed upon to ensure that the Public Service Commission shall be manned by competent, honest and independent persons of outstanding

ability and high reputation. Since there is No. direction in the aforesaid judgment to lay down criteria in respect of the educational qualification, experience or stature, this Court, as observed in Mehar Singh Saini's case, is not equipped to mandate through any directives laying down any criteria or guidelines for appointment to the post of Chairman and the Members of the Public Service Commission. Reliance was placed upon [Jai Shankar Prasad, Adv. Vs. State of Bihar and Others,](#) wherein appointment of a member, who was blind by birth was the subject matter of challenge. It was noticed that inspite of such blindness, he was able to pursue his educational career obtain degrees and diploma. The Candidate was Ph.D. in English and University College Teacher in English. It was found that the Government, which has appointed him on the advice of the Council of Ministers, is presumed to have done so after satisfying himself that the loss of eyesight was not an infirmity, which would impair him in discharge of duties. It is, thus, contended that when the Council of Ministers considers and recommends a candidate for appointment, the Hon"ble Governor shall satisfy himself about the materials placed and approve and act on the advice. The only check shall be to ensure that there is No. oversight or procedural irregularities in making recommendation of a candidate to the Hon"ble Governor for appointment. Therefore, there are in built procedure to ensure that the candidates of high caliber, integrity and merit alone are appointed.

49. In exercise of the powers of judicial review, the only area of intervention that could be made by the High Court, as further argued by Mr. Hooda, is when the action of an administrative authority is capricious, arbitrary or mala-fide, but this Court cannot interfere on the ground that the State Government has failed to frame guidelines when there was No. such direction by any court in the matter of procedure for appointment. For explaining the scope of the judicial review, reliance was placed upon para 133 of the judgment in [S.R. Bommai and others Vs. Union of India and others etc. etc.,](#) . It is pointed out that the Supreme Court has issued directions in certain cases, keeping in view its plenary power under Article 32 read with Article 142 of the Constitution of India but this Court has No. analogous jurisdiction as that conferred on the Supreme Court in terms of Article 142 of the Constitution of India. It is contended that the guidelines in the matter of sexual harassment to the working women in Vishaka's case (supra) and in respect of reforms in Police in [Prakash Singh and Others Vs. Union of India \(UOI\) and Ors,](#) have been issued to give effect to the Fundamental Rights, but in respect of appointment of the Chairman or Members of the Public Service Commissions, there cannot be infringement of any fundamental right, which may clothe this Court to issue any guidelines.

50. Dr. Anmol Rattan Sidhu and Mr. S.S. Swaich, learned Counsel appearing for the Government of India, have pointed out that the first Administrative Reforms Commission has noticed the deficiencies in the functioning of the Public Service Commission and suggested the remedial steps. The Relevant Extracts of the Second Administrative Reforms Commission, have been attached with the reply. The said

report made recommendations and such recommendations have been circulated by the Government of India to the State Governments. It is contended that this Court in exercise of jurisdiction can examine the decision making process, but not the decision itself. Such judicial review is not a judicial activism, but, to borrow the phrase used in the course of arguments, a gentle-nudge to the State Government to perform its duties. It is contended that the Supreme Court has issued directions and framed scheme for the purpose of admission in professional institutes, in Unnikrishnan's case and that the jurisdiction under Article 226 of the Constitution is wide to undertake a similar exercise. Such jurisdiction cannot be compared with the jurisdiction of the Supreme Court under Article 142 of the Constitution. Reliance is placed upon *B.R. Kapur v. State of Tamil Nadu*, AIR 2001 Supreme Court 3435, [Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another](#), to contend that the words "for any other purpose" in Article 226 of the Constitution makes the jurisdiction more expansive.

51. Mr. Gurminder Singh, learned Counsel, representing the Commission has argued that Article 320 enjoins the Commission to make recruitment to all the civil posts. Class III and IV (now Group C and D) have been taken out of purview of the Commission in terms of the Regulations. The State Government has taken more than 3000 posts out of the purview of the Commission as the confidence which is to be reposed in the Commission is lacking to an extent that the Chief Secretary of the State Government has sought intervention by the Union Public Service Commission to make appointments to the PCS (Executive Branch). The Commission is not being permitted to discharge its constitutional functions. Reliance is placed upon [State of U.P. Vs. Manbodhan Lal Srivastava](#), to contend that it is not open to the Executive Government to completely ignore the existence of the Commission and to pick and choose the cases, in which it may or may not be consulted.

52. In [State of Uttaranchal Vs. Balwant Singh Chaufal and Others](#), the Supreme Court has approved the issuance of guidelines and directions in the third phase of public interest litigation dealing with probity, transparency and integrity in governance in exercise of powers under Article 226 of the Constitution of India. It was observed as under:

....The higher courts exercised wide powers given to them under Articles 32 and 226 of the Constitution. The sort of remedies sought from the Courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the Courts have also given guidelines and directions. The Courts have monitored implementation of legislation and even formulated guidelines in the absence of legislation...

In the aforesaid case, the Court quoted with approval inter-alia [Vineet Narain and Others Vs. Union of India \(UOI\) and Another](#); [Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India \(UOI\) and Others](#), and [M.C. Mehta Vs. Union of India \(UOI\) and Others](#), and observed:

96. In the 1990s, the Supreme Court expanded the ambit and scope of public interest litigation further. The High Courts also under Article 226 followed the Supreme Court and passed a number of judgments, orders or directions to unearth corruption and maintain probity and morality in the governance of the State. The probity in governance is a sine qua non for an efficient system of administration and for the development of the country and an important requirement for ensuring probity in governance is the absence of corruption. This may broadly be called as the third phase of the public interest litigation. The Supreme Court and High Courts have passed significant orders.

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100. These are some of the matters where the efficacy, ethics and morality of the governmental authorities to perform their statutory duties was directed under the scanner of the Supreme Court and the High Courts.

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103. These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and No. extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation.

53. Similar is the view of the Supreme Court in [P.V. George and Others Vs. State of Kerala and Others](#), , when court said:

This Court in exercise of its jurisdiction under Article 32 or Article 142 of the Constitution of India may declare a law to have a prospective effect. The Division Bench of the High Court may be correct in opining that having regard to the decision of this Court in [I.C. Golak Nath and Others Vs. State of Punjab and Another](#), the power of overruling is vested only in this Court and that too in constitutional matters, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, even without applying the doctrine of prospective overruling, indisputably may grant a limited relief in exercise of their equity jurisdiction.

54. In [Employees State Insurance Corporation and Others Vs. Jardine Henderson Staff Association and Others](#), , the Court observed:

62.... This Court under Article 142 of the Constitution of India is empowered to pass such orders as would do complete justice between the parties. This Court is also empowered to mould the relief in such a manner so that it is not only just but also equitable even while declaring the law as observed in para 25 of ONGC Ltd. v. Sendhabhai Vastram Patel, (2005) 6 SCC 454 and [Raj Kumar and Others Vs. Union of India \(UOI\) and Another](#), .

63. The High Court under Article 226 and this Court under Article 136 read with Article 142 of the Constitution of India have the power to mould the relief in the facts of the case.

55. In *Raymond Ltd. v. M.P. Electricity Board*, (2001) 1 SCC 534, Court observed:

23. the writ jurisdiction conferred upon High Courts under Article 226 of the Constitution does not carry any restriction in the quality and content of such powers, this Court could always have recourse to the said doctrine or principle or even de hors the necessity to fall back upon the said principle pass such orders under powers which are inherent in its being the highest court in the country whose dictates, declaration and mandate run throughout the country and bind all courts and every authority or persons therein and having regard to Articles 141 and 142 of the Constitution of India. The appellate powers under Article 136 of the Constitution itself would also be sufficient to pass any such orders. This Court has been from time to time exercising such powers whenever found to be necessary in balancing the rights of parties and in the interests of justice (vide: [Union of India and others Vs. Mohd. Ramzan Khan](#), , [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#), and [India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others](#), . The decision reported in [State of Himachal Pradesh and Others Etc. Etc. Vs. Nurgur Private Bus Operators Union and Others Etc. Etc.](#), at any rate is No. authority for any contra position to deny such powers to this Court.

56. Article 142 empowers the Supreme Court "in exercise of its jurisdiction" to pass such decree or order as may be necessary for doing complete justice in any cause. The powers of the Supreme Court under Article 142 is not an independent jurisdiction in itself, but how it will engineer its powers in jurisdictions which the Supreme Court possesses, such as original, civil or criminal appellate or conferred by the Constitution or by statute, to pass such decree or order, as is required for doing complete justice. It cannot be exercised when the Court is not exercising any other jurisdiction. An order passed by the Supreme Court with the aid of Article 142 also cannot be contrary to the express statutory provisions. In [Supreme Court Bar Association Vs. Union of India and Another](#), , the Supreme Court has held as follows:

47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in

particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is No. doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise.

....

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute settling.

It is a "problem-solver in the nebulous areas

57. In [M.S. Ahlawat Vs. State of Haryana and Another](#), , while considering the aforesaid judgment, the Supreme Court observed as under:

13. In the light of the enunciation of law made by this Court in Supreme Court Bar Association case, this Court could not have assumed jurisdiction by issue of a notice proposing conviction for forgery and making false statements at different stages in the Court punishable u/s 193 Indian Penal Code, 1860 without following the procedure prescribed under Sections 195 and 340 Code of Criminal Procedure. Primarily this Court does not exercise any original criminal jurisdiction in relation to offences arising u/s 193 Indian Penal Code, 1860 and secondly the seriousness of the charge arising u/s 193 Indian Penal Code, 1860 requires an elaborate inquiry and trial into the matter by the competent criminal court and a summary inquiry by mere issuing a show-cause notice and considering affidavits or inquiry reports would not tantamount to the procedure provided under the Code of Criminal

Procedure. The order made by this Court convicting the Petitioner u/s 193 Indian Penal Code, 1860 is, therefore, one without jurisdiction and without following the due procedure prescribed under law. Though it is not clear from the impugned order whether the powers under Article 142 of the Constitution were exercised to convict the Petitioner u/s 193 Indian Penal Code, 1860, we have proceeded on the assumption that it is by exercise of that power that the impugned order had been made for there is no other provision enabling the passing of such an order. As discussed earlier, in view of the decision in Supreme Court Bar Association Case, such an order could not have been made.

58. The Administrative Reforms Commission in the 15th Report has noticed the intention behind the creation of autonomous Public Service Commission as a body of achievers and exadministrators, who could select meritorious candidates for recruitment and promotion to various civil service positions under the State Government with utmost probity and transparency. It noticed that there has been considerable erosion in the reputation and the credibility of the Public Service Commissions in some States. Keeping in view the said report, the Central Government has issued directions to the State Governments in its communication dated 22.8.2007 that the academic worth, intellectual, caliber, honesty and integrity, are relevant while making appointment of the Chairman and members of the Public Service Commission. In the communication dated 2.10.2010, conveyed that the working of the Commission and its members has to be of impeccable integrity and rectitude.

59. But the information supplied shows that the large numbers of posts have been taken out of the purview in Punjab in the last five years thus denuding the Commission of its power to perform the functions assigned. In Haryana, the Chairman and eight members were suspended, which shows that members of high caliber and integrity were not appointed. Large numbers of cases are filed before this Court and few taken to Supreme Court, in respect of recommendation made by the Commission. This Court cannot look the other way when it is flooded with the litigations challenging the recommendations made by the Public Service Commission in both the States. Such position reflects that the Commission has not been able to instill confidence in the aspiring candidates that the selection procedure is fair and reasonable. The proceedings of the Commissions within the jurisdiction of this Court belie the high hopes raised by the founding fathers of the Constitution expressed in number of judgments by the Supreme Court and noticed by the Administrative Reforms Commission.

60. On this point, another argument raised by Mr. Rao needs to be discussed. It is argued that there are many posts under the Constitution which do not reflect any criteria for appointment. Reference is made to Article 76 relating to appointment of Attorney General for India; Article 165 relating to appointment of the Advocate General in the State; Article 148 relating to appointment of the Comptroller and

Auditor General; Article 153 relating to appointment of Governors of the States apart from the Articles 124 and 217 in respect of the appointment of the Judges of the Supreme Court and High Courts. It is, thus, contended that in respect of certain categories of posts, the Constitution has left qualifications for such posts unspecified so that the competent authority has liberty to pick up the best person considered suitable for the post. Therefore, for the purpose of Article 316 of the Constitution, it cannot be said that there should be law in respect of educational and academic qualifications etc. of the Chairman and Members of the Commission.

61. The said argument finds answer in *B.P. Singhal v. Union of India and Anr.*, (2010) 6 SCC 331. In the said case, the court noticed that though Governors, Ministers and the Attorney General, all hold office during the pleasure of President, but there is intrinsic difference between the office of Governor and the office of Ministers and the Attorney General. The Governor is the constitutional head of the State. He is not an employee or agent of the Government of India nor is a part of any political team. On the other hand, the minister is a handpicked member of the Prime Minister's team. The relationship between the Prime Minister and a Minister is purely political. Though the Attorney General holds a public office, there is an element of lawyer-client relationship between the Union Government and the Attorney General. Loss of confidence will therefore, be a very relevant criterion for withdrawal of pleasure in the case of a Minister or the Attorney General, but not a relevant ground in the case of a Governor. Thus, the nature of appointment, the functions to be discharged is relevant to find out the nature of assignment. The Chairman and Members of the Commission have the constitutional function to be consulted on all matters relating to methods of recruitment to the civil services and for civil posts and on the principles to be followed in making appointments to civil services. The administration of State will be dependent upon the kind of personnel that is selected to achieve efficiency, integrity and sincerity to the work. The Members and the Chairman of the Commission have to be impeccable integrity, caliber and qualifications. The Chairman and the Members of the Commission have to discharge onerous function of choosing the most suitable candidates for appointment to the civil posts under the State Governments.

62. But the functioning of many a Public Service Commission have not been a happy experience. Such an aspect has been noticed by the Courts time and again and also by the Administrative Reforms Commission. The Successive State Governments have failed to develop any criteria for appointment of persons of integrity as Members and Chairman of the Commission. Therefore, a transparent, fair and objective procedure is required to be established to ensure that the persons of impeccable personal integrity, caliber and qualifications alone are appointed as Chairman/Members of the Public Service Commission.

63. In view of the aforesaid judgments, the jurisdiction of this Court is No. way restricted to pass such orders as may be necessary to give effect to the fundamental

rights. The High Court can issue directions in exercise of powers of judicial review for maintaining transparency and probity in the administration. Such directions are issued on the touchstone of Article 14 that there should not be any arbitrariness or discrimination. All actions of the administrative authorities including the recommendations of appointment of Chairman and Members of the commission have to be on the basis of transparent, objective criteria which shall exclude vice of arbitrariness and mala-fides. This exercise becomes necessary in the light of data available from the State Public Service Commission's dossiers: that the efficacy of the commission is being doubted by the State Government itself in its communiqué to the UPSC; that the appointments of the Chairman and the selections made have been mired in controversies in the past; that there is a systematic sidelining of the Commission by the State removing several selections from its purview; that the Central Government's directives echoing its concern that the State Governments shall improve the quality of appointments to the Commissions to redeem people's confidence that is getting eroded have not evoked any positive response yet; that we carry the burden of the aspirations of the Founding Fathers of the Constitution document in failing to insulate the Commissions from politically partisan appointments and not always selecting persons of impeccable integrity and high scholarship; that there have been the Commission's frustrations themselves of its gradual loss of importance by continual apathy to its functioning by State; that the Supreme Court's exhortations and interventions for restoring the credibility of the Commissions have persisted without implementation and above all, the popular public perception that Public Service Commission is an institution on the wane. Courts do not watch in despondency the fall of haloed public institutions to plummeting abyss. Between constitutional dynamism and effete wailings, the choice is clear: the Court will issue suitable directions and restore institutional credibility. This does not go to wrest power or breach the delicate constitutional balance of separation of powers. On the other hand, it fills up the void that hurts public interest; It letters on legal epitaph, where hope and wordy exhortations are filled with what we believe is purposeful intervention.

Question No. 4.

Whether in exercise of power of judicial review, the decision making process, leading to the appointment of Respondent No. 4 as Chairman of Commission, cannot be said to be arbitrary, capricious or violative of Article 14?

64. It is also submitted on behalf of the State of Punjab and the 4th Respondent that the Petitioner is a young Advocate, practising in this Court for the last two or three years, but Respondent No. 4 is a practicing Advocate, with the standing of 25 years. The said Respondent was a member of Bar Council for Punjab and Haryana for three terms and also Chairman of the same Bar Council. It is pointed out that the writ petition is personal and politically motivated and to achieve publicity at the cost of a highly respected member of the Bar

65. We would like to quote from Mr. P.P. Rao's article published in "The Tribune" Chandigarh in its edition dated 30th July, 2010. Mr. P.P. Rao has written that "Public Service Commissions in several states are packed with incompetent and corrupt henchmen of the leaders in power." He would suggest, "Separate search committees are required for the selection of suitable chairmen and members of service commissions." He would however qualify at the same breath that the changes have to be ushered only by the legislature.

In a recent judgment in B.P. Singhal's case (supra), the Supreme Court has noticed that the contemporary English view is that "political questions" and exercise of prerogative power will be subject to judicial review on principles of legality, rationality or procedural impropriety. It was observed to the following effect:

... The contemporary English view is that in principle even such "political questions" and exercise of prerogative power will be subject to judicial review on principles of legality, rationality or procedural impropriety.

Judicial review has developed to the point where it is possible to say that No. power---whether statutory or under the prerogative--is any longer inherently un-reviewable. Courts are charged with the responsibility of adjudicating upon the manner of the exercise of public power, its scope and its substance. As we shall see, even when discretionary powers are engaged, they are not immune from judicial review.

66. The Court has considered the earlier judgments in [State of Rajasthan and Others Vs. Union of India and Others](#), ; [Shri Kihota Hollohon Vs. Mr. Zachilhu and others](#), and [R.C. Poudyal and Others Vs. Union of India and others](#), , and observed that the power of the President/Governor to grant pardon, etc. and to suspend, remit or commute sentences are part of the constitutional scheme and not an act of grace as in England. It is a constitutional responsibility to be exercised in accordance with the discretion contemplated by the context. It is not a matter of privilege but a matter of performance of official duty. All public power including constitutional power, shall never be exercisable arbitrarily or mala-fide, While the President or the Governor may be the sole judge of the sufficiency of facts and the propriety of granting pardons and reprieves, the power being an enumerated power in the Constitution, its limitations must be found in the Constitution itself. The Court further observed as under:

...The Courts exercise a limited power of judicial review to ensure that the President considers all relevant materials before coming to his decision. As the exercise of such power is of the widest amplitude, whenever such power is exercised, it is presumed that the President acted properly and carefully after an objective consideration of all aspects of the matter. Where reasons are given, the Court may interfere if the reasons are found to be irrelevant. However, when reasons are not given, the Court may interfere only where the exercise of power is vitiated by

self-denial on wrong appreciation of the full amplitude of the power under Article 72 or where the decision is arbitrary, discriminatory or mala fide.

67. The Court has held that in exercise of the powers under Article 156 of the Constitution, the President should act in a manner which is not arbitrary, capricious and unreasonable. In the event of challenge of withdrawal of the pleasure, the Court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a prima facie instance of arbitrariness or mala-fides, in his removal, the Court will refuse to interfere. However, where a prima facie case of arbitrariness or mala fides is made out, the Court can require the Union Government to produce records/materials to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. The Court also noticed that the extent and depth of the judicial review will depend upon and vary with reference to the matter under review. The judicial review is permissible in regard to administrative action, legislations and constitutional amendments, but the extent or scope of judicial review for one will be different from the scope of judicial review for the other. It was observed to the following effect:

The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in *Daly* in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the review of administrative action but is not a ground for judicial review of legislations or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an Attorney General, loss of confidence may be a relevant ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for withdrawal of pleasure in the case of Governor, loss of confidence or the Governor's views being out of sync with that of the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney General, when compared to Governors. As a result the judicial review of withdrawal of pleasure, is limited in the case of a Governor whereas virtually nil in the case of a Minister or an Attorney General.

68. In view of the above Constitution Bench judgment of the Supreme Court, we find that the power of judicial review is permissible in regard to the administrative action of appointment of the Chairman and Members of the Commission. The power of judicial review as mentioned in *B.P. Singhal's* case (supra) would be different in nature and scope than the power of judicial review in respect of the administrative orders in relation to the officers and officials of the State Government. In respect of the post of Chairman and Members of the Commission, the power of judicial review extends to the decision making process. The decision making process should show objectivity and transparency in selecting a suitable candidate to discharge the

constitutional obligations.

69. The records pertaining to the decision making process have been produced. In so far as they are relevant to the choice of the Chairman, they contain No. more than a single sheet of the bio data of the 4th Respondent. Only the name of Respondent No. 4 was considered and recommended for appointment in a day. The affidavit filed on behalf of the said Respondent spells out that he was Vice- President of Shiromani Akali Dal; President of Legal Cell of Shiromani Akali Dal and the spokesperson of the present ruling party. He resigned from the membership of the State Assembly on 6.7.2011 and on the next date i.e. 7.7.2011, he has been appointed as Chairman of the Commission. The decision making process on the basis of material produced shows that the appointment was made with a pre-conceived mind and in a determined manner to appoint Respondent No. 4 as the Chairman of the Commission. It cannot be said that the Respondent No. 4 is the only candidate who could be considered and appointed for such assignment. The law declared by the Supreme Court is that the Chairman and Members of the Commission have to be persons of impeccable integrity, caliber and merit. Such is the recommendation of the Administrative Reforms Commission and circulated by Central Government to the State Governments. The test of Article 14 shall traverse as far as to see that in the appointment to a Constitutional institution, there is No. arbitrariness involved in the process and it follows a well defined set of guidelines. The Commission is entrusted with the task of making selections to all the civil posts in the state. The candidates in such selection process are entitled to be treated fairly, equitably and in transparent manner. The commission cannot conduct selection process in arbitrary, capricious and mala-fide manner. To ensure probity and transparency in the selection process, it is necessary that the members of the Commission are also appointed in transparent and objective manner. Article 14 ensures that all appointments under the constitution of India are made fairly, objectively and in transparent manner. The appointment to the constitutional posts such as members of the Commission cannot be excluded from such principle. Since the decision making process is not transparent, objective and No. effort has been made to choose the best possible talent to discharge the Constitutional functions, the appointment of Respondent No. 4 is liable to be set aside.

70. During the course of arguments, it transpired that in respect of appointment of the Vice Chancellors of a University, generally a search committee is constituted to consider and recommend suitable candidates for appointment to the Chancellor. This is also suggestion of Mr. Rao in his article mentioned above. Therefore, we find that constitution of search committee even to consider candidates for appointment as Member or Chairman would be first step for a transparent and objective consideration of the candidates. We also find that successive political governments have developed distrust in the fair and independent working of commission which is evident from large scale act of taking posts out of purview of Commission, mass suspension of the members and

chairman of the commission. One of the possible solutions to bring credibility and probity in the working of commissions is to associate leader of opposition as part of the selection process. The association of leader of opposition, who represents the second largest political party in the State Legislature can be said to be collective representation of the people of State. Such process shall instill in the mind of the people that the decision is being taken in the interest of the administrative services and to provide continuity of functioning of the Commissions. Mr. M.N. Kaul and Mr. S.L. Shakdher, noted commentators on the parliament practices, in their book titled as "Practice and Procedure of Parliament" (Fifth Edition) 2001, in Chapter VIII, at page 142-143, have described the role of the Leader of Opposition in the context of Indian Parliament, but such role of Leader of Opposition is parimateria applicable to the Leader of Opposition in the State Legislature. The authors have said as under:

The parliamentary system of government makes it obligatory for the opposing forces to struggle for power on the floor of the House by recognized parliamentary methods.

One of the biggest parliamentary achievements of the present century is that the role of the Opposition has been formally recognized and is given a due place in the parliamentary system. The Leader of the Opposition is thus an important person. He is a shadow Prime Minister and he has to be prepared to take up the responsibility of forming a Government if his party secures a majority at an election or if the Government resigns or is defeated. He has, therefore, to measure carefully his words and actions and on a matter of national interest to act with as much responsibility as is expected of the Prime Minister. Though he may criticize the Government vehemently on the floor of the House and outside in his country, but abroad he should eschew party politics.

The process of parliamentary government is based on mutual forbearance between the Opposition and the Government. If the Leader of the Opposition lets the Prime Minister govern, he in turn is permitted to oppose. On certain matters, such as foreign relations, defence policy etc., the Prime Minister may at times consult the Leader of Opposition before making a commitment. and in times of grave national crisis, the Leader of the Opposition usually underlines the unity of the nation on a particular issue by openly identifying himself with the Government policy.

The Prime Minister and the Leader of the Opposition try to meet each other's convenience as far as possible, consistent with their basic policies. While eschewing obstructionism as such, the Leader of the Opposition, if he feels that the Government is trying to slide over an important issue and shun parliamentary criticism, can rightfully demand debate on that issue.

The Leader of the Opposition is the official spokesman of the minority or minorities and to that end he zealously watches any encroachment on their rights. His task, though not so difficult as that of the Prime Minister is of sufficiently great public

importance because he has to maintain a team - a 'shadow Cabinet' - ready to take over administration. In performing his duties and obligations, the Leader of the Opposition has to take into account not only what he is today but what he hopes to be tomorrow.

71. Keeping in view the role of the leader of opposition in Indian Democracy and the fact that the Leader of opposition is now a well accepted office associated in making selections of various posts of higher responsibility such as Chairman and Members of the National or State Human Rights Commissions; Chief Vigilance Commissioner under the Central Vigilance Commission Act, 2003 and Lokayukta under the Haryana Lokayukta Act 2002, therefore, the association of such person would exclude the possibility of allegation or suspicion that a candidate is sponsored by one or the other political group. The association of Speaker of Legislative Assembly shall be symbolic representation of legislature and also of a person who is expected to be apolitical. In selecting Member or Chairman, there should not be any consideration that the incumbent is their man or my man. The guiding principle should be to choose a person who has impeccable integrity, caliber and administrative experience.

72. We thus direct that till such time a fair, rational, objective and transparent policy/norms to meet the mandate of Article 14 is made, both the States shall follow the following procedure as part of the decision making process for appointments as Members, and Chairman of the Public Service Commission:

1. There shall be Search Committee constituted under the Chairmanship of the Chief Secretary of the respective State Governments.
2. The Search Committee shall consist of at least three members. One of the members shall be serving Principal Secretary i.e. not below the rank of Financial Commissioner and the third member can be serving or retired Bureaucrat not below the rank of Financial Commissioner, or member of the Armed forces not below the rank of Brigadier or of equivalent rank.
3. The Search Committee shall consider all the names which came to its notice or are forwarded by any person or by any aspirant. The Search Committee shall prepare panel of suitable candidates equal to the three times the number of vacancies.
4. While preparation of the panel, it shall be specifically elicited about the pendency of any court litigation, civil or criminal, conviction or otherwise in a criminal court or civil court decree or any other proceedings that may have a bearing on the integrity and character of the candidates
5. Such panel prepared by the Search Committee shall be considered by a High Powered Committee consisting of Hon"ble Chief Minister, Speaker of Assembly and Leader of Opposition.

6. It is thereafter, the recommendation shall be placed with all relevant materials with relative merits of the candidates for the approval of the Hon"ble Governor after completing the procedure before such approval.
7. The proceedings of the Search Committees shall be conducted keeping in view the principles laid down in Centre for PIL's case (Supra).
73. The points of reference having been answered through questions formulated above, the Writ petition is ordered to be listed before the Division Bench after obtaining orders from the Hon"ble Acting Chief Justice today itself at 2.00 pm.
74. Before we part with the order, we acknowledge valuable assistance provided by learned Counsel for the parties, who argued the matter with thorough preparation on the legal issues arising for consideration before this Bench.