2025 INSC 834

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2025
[@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 23141 OF 2024]

MANDEEP SINGH & ORS. ...APPELLANTS

Versus

STATE OF PUNJAB AND ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO(S). OF 2025
[@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 23324 OF 2024]

AND

CIVIL APPEAL NO(S). OF 2025
[@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 907 OF 2025]

J U D G M E N T

SUDHANSHU DHULIA, J.

1. Leave granted.

2. The appellants before this Court have challenged the judgment dated 23.09.2024, of the Division Bench of Punjab and Haryana High Court which has reversed the findings of the learned Single Judge and has thereby upheld the selections

made by the State of Punjab for the posts of Assistant Professors and Librarians in Government Degree colleges of Punjab.

3. The brief facts of the case are as follows:

a. In January 2021, the State of Punjab had sent separate requisitions to the Punjab Public Service Commission (hereinafter referred to as 'Commission'), for recruitment of 931 Assistant Professors (dated 15.01.2021) and 50 Librarians (dated 29.01.2021), in Government Degree Colleges in the State. Consequent to this and based on correspondences exchanged, the Commission engaged 24 subject experts to prepare the syllabus for the competitive examinations and honorarium was paid to them.

b. Later, an additional 160 posts of Assistant Professors and 17 posts for Librarians were created and sanctioned for newly established colleges, and on 15.09.2021, the State's Department of Higher Education (hereinafter referred to as 'the Department') sought Commission's consent to fill these posts through the Departmental Selection Committee rather than the Commission.

c. The Commission replied by letter dated 16.09.2021, expressing their inability to respond on the ground of the

Chairman having retired and the new appointment having not taken place. The Government then by a memorandum dated 17.09.2021 approved the recruitment of 160 and 17 posts of Assistant Professors and Librarians respectively, through Departmental Selection Committees which though had to follow the University Grants Commission (hereinafter 'UGC') guidelines or regulations.

d. A change in Government happened on 20.09.2021 after which on 09.10.2021, the selection process was reviewed in a meeting chaired by the Secretary, Department of Higher Education. In this meeting, the entire process of recruitment was changed and it was decided that selection would now be made only on the basis of a Written Test, which will be conducted by two separate selection committees of two State Universities: (a) Punjab University, Patiala, and (b) the Guru Nanak Dev University, Amritsar. Further, it was decided that all the 1091 posts (931 plus 160 posts) of Assistant Professors and 67 posts (50 plus 17 posts) of Librarians; and not just the posts recently created, are to be filled through

these departmental selection committees. This decision was placed for approval before the Chief Minister on 12.10.2021, with the observation that it shall subsequently be placed for approval before the Council of Ministers; latter approval was never obtained.

e. On 18.10.2021, Government issued a memorandum conveying to Director Public Instructions (Colleges) (hereinafter 'DPI') the decision for recruitment of 1091 Assistant Professors and 67 Librarians on the basis of two departmental selection committees of two State Universities. On 19.10.2021, advertisements for the above posts were issued.

f. In a little over a month, the exam was conducted and the result was announced on 28.11.2021. Meanwhile, in the first week of November, Writ Petitions were filed before the High Court, challenging the memorandum dated 18.10.2021 and advertisements dated 19.10.2021. On 26.11.2021 in CWP No. 22446 of 2021, before the results were published, while issuing notice, it was clarified that the selection shall be subject to the result of the writ petition.

g. Vide order dated 08.08.2022, the learned Single Judge allowed the Writ Petitions and quashed the entire recruitment process for being in violation of law inasmuch as the Commission not having been excluded as per procedure prescribed and State having not followed the UGC guidelines and adopting an arbitrary process for the recruitment.

h. Against the order of the learned Single Judge, the State of Punjab as well as the candidates who were selected/appointed filed intra-court appeals. Vide the impugned order dated 23.09.2024, the Division Bench of the High Court allowed these intra-court appeals and upheld the recruitment by quashing the order passed by the learned Single Judge. Assailing the same, appellants are before us.

4. Before the learned Single Judge, the Division Bench as well as before this Court, the appellants' have been consistent in their submission that the recruitment process was vitiated on more than one count. Most importantly the recruitment was made in violation of UGC Regulations of 2010 (hereinafter '2010 UGC Regulations') which were adopted by the State of Punjab on 30.07.2013, and which mandated an

entirely different criterion and procedure for recruitment. Further the selection to these posts ought to have been made through the Commission, as admittedly these were the posts within the purview of Commission [under Article 320 of the Constitution of India read with Punjab Public Service Commission (Limitation of Functions) Regulations, 1955 (hereinafter 'the 1955 Regulations')]. In any case, the entire process is arbitrary and was followed not in the interest of the State or for the cause of higher education but for narrow political gains.

5. The State and the private respondents would though argue that Article 320(3) is directory and not mandatory in nature. They would submit that the State government is empowered to decide its own method and procedure of recruitment for the posts of Assistant Professors and Librarians in Degree colleges under the State government; and it is not bound to make these selections through the Commission.

6. We have heard Senior Advocates Mr. Raju Ramchandran, Mr. Nidhesh Gupta, Mr. Preetesh Kapur and Mrs. Rekha Palli appearing for the appellants, and Senior Advocates Mr. Kapil Sibal, Mr. Rakesh Dwivedi and Mr. P.S. Patwalia for the private respondents. We have also heard Mr. Shadan Farasat,

Additional Advocate-General appearing on behalf of the State of Punjab.

7. It is first necessary to narrate the sequence of events and their context as this would give us a better perspective. A large number of posts of Assistant Professor and Librarians in Degree Colleges remained unfilled for the last 20 years or so in Punjab. The last selection to these posts was only made in the year 2002, and this too got into trouble due to allegations of corruption which led to a protracted litigation. Later, another recruitment was attempted in the year 2008 for 265 posts which was again stuck in litigation for many years. The issue of large unfilled vacancies in Punjab had come earlier before this Court by the guest/part-time faculties where a Three-Judge Bench of this Court vide its order dated 02.12.2014 had directed the Commission to fill the sanctioned vacant posts as soon as possible. The relevant portion of that order reads as under:

> *"4. We do not intend to keep these Special Leave Petitions on board. Accordingly, we dispose of the Special Leave Petitions with an observation that the Punjab Public Service Commission, Patiala will take all effective steps to fill up all the sanctioned posts of the*

lecturers in the State of Punjab as expeditiously as possible, at any rate, within 12 months' time from today."

The argument of the State is that the main reason for these vacancies remaining unfilled for all these years was that these posts were within the purview of the Commission which had failed to fill these posts and hence the decision taken by the State to remove these posts from the purview of the Commission and to expedite the process of selection was in public interest.

8. The Commission has a duty to make selections for different services in response to the requisition of the State government. In the present case, in January 2021, the State government had sent two requisitions for the recruitment of 931 Assistant Professors and 50 Librarians respectively, yet no decision had been taken by the Commission.

9. Article 320(3) of the Constitution provides that the Commission shall be consulted in the recruitment of different services. The relevant portion of Article 320 of the Constitution reads as follows:

"Article 320: Functions of Public Service Commissions-
(1)...
(2)...

(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;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government

of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

Public Service Commission at the Union and at the State levels are constitutional bodies. There is a purpose for which these institutions have been created, which we shall discuss in a while. All the same, it is not necessary that all posts in the States or Union must be filled through Commission. It is not mandatory. But there is a method prescribed under the law to take out these posts from the purview of the

Commission. This has been violated in the present case; is the argument. But first, for the role of the Commission.

10. Impartiality, fairness and recognition of merit while selecting Public Servants are absolutely necessary in modern democracies. The basic purpose of a Union Public Service Commission or State Public Service Commission(s) for that matter, is to remove impartiality and political influence while making selection on Public Posts. It is necessary to have an impartial Public Service Commission in a Democracy, or everything will be reduced to a mere scramble for jobs[1]. The concept is not new. It goes back to the Government of India Act, 1919, and even earlier to the pre 1857 era. The East India Company, which had under its administration a vast area, felt the need to replace the system based on recommendations and nominations to a merit-based system, which was also the recommendation of the Macaulay Committee Report[2]. A Civil Service Commission was then established in 1854 to conduct competitive examinations which were held for the first time in the year 1855.

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1 Dr. Naresh Chandra Roy, The Working of the Public Service Commission in Bengal, Indian Political Science Conference, Third Session, Mysore, Dec 1940, p.192.
2 *See* Macaulay Report on the Indian Civil Service 1854.

11. It was the Government of India Act, 1919 that formally introduced the concept of Public Service Commissions in India. Section 96C[3] provided for the establishment of a Central Public Service Commission in India. But the Public Service Commission was not set up immediately till its need was emphasized by the Lee Commission in its report of 1924:

> *"Wherever democratic institutions exist, experience has shown that to secure an efficient Civil Service it is essential to protect it so far as possible from political or personal influences and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the "spoils system" has taken place, an inefficient and disorganized Civil Service has been the inevitable result and corruption has been rampant. In America a Civil Service Commission has been constituted to control recruitment of the Services, but, for the purposes of India it is from the Dominions of*

3 **Section 96C: Public Service Commission-** (1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Secretary of State in Council. Each member shall be removed before the expiry of his term of office, except by order of the Secretary of State in Council. The qualifications for the appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Secretary of State in Council.

(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council

the British Empire that more relevant and useful lessons can perhaps be drawn. Canada, Australia and South Africa now possess Public or Civil Services Acts regulating the position and control of the Public Services, and a common feature of them all is the constitution of a Public Service Commission, to which the duty of administering the Acts is entrusted. It was this need which framers of the Government of India Act had in mind when they made provision in Section 96C for the establishment of a Public Service Commission to discharge "in regard to recruitment and control of the Public Services in India such functions as may be assigned thereto by rules made by the Secretary of State in Council". Since the passing of the Act, a prolonged correspondence, extending over nearly four years, has been passed between the Secretary of State, the Government of India, and Local Governments, regarding the function and machinery of the body to be set up. No decisions have, however, been arrived at, and the subject has been referred to this Commission for consideration"[4]

12. It was based on the recommendation of the Lee Commission that the Commission was formed as contemplated under the Government of India Act, 1919. The Central Public Service Commission was thus established in the year 1926, and its functions were governed by the Public Service Commission

4 Report of the Royal Commission on Superior Civil Services in India, dated 27th March, 1924 at pp.13-14 and 16.

(Function) Rules, 1926. Till this stage, the role of a similar Commission at Provincial level was not much in discussions.

13. It was only with the Simon Commission Report that we have an official recommendation for the first time for the setting up of Provincial Public Service Commissions. It is well-known that the formation of the Simon Commission was resented by the leaders of the Indian freedom struggle, primarily because it had no Indian representative, and because senior officials of the British Raj had questioned the very ability of Indians to draft a Constitution. In response, an all-party committee under the chairmanship of Congress stalwart Motilal Nehru was formed, which was tasked with drafting a Constitution for India. The report submitted by this committee (which came to be known as the Nehru Report) also favoured the creation of a Permanent Public Service Commission to deal with issues such as the recruitment, appointment, emoluments etc. of civil servants in India.

14. Finally, a Federal Public Service Commission and Public Service Commissions for Provinces were established under Section 264[5] of the Government of India Act, 1935 and their

5 **264.Public Service Commission**: (1) Subject to the provisions of this Section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

functions were given in Section 266, which was *pari materia* to Article 320 of the Constitution.

15. While the Constituent Assembly was busy in drafting the Constitution for free India, the Public Service Commission at the Centre and in some of the States were already functioning.

16. During discussion on Public Service Commissions in the Constituent Assembly Debates, Dr. P.S Deshmukh highlighted the purpose and importance of the Public Service Commissions in these words:

> *"...these Commissions are said to be a necessity of a modern State. <u>These Commissions are primarily meant to keep appointments away from day to day politics</u>, party preferences and influences and the attempt is made, by having recourse to these Commissions, that the appointments shall be as far as possible on merit and there shall be no interference in their choice or in their selection from day to day by the executive authorities of the State."*

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(2) Two or more Provinces may agree-

(a) that there shall be one Public Service Commission for that group of Provinces; or

(b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces,

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.

(3) The Public Service Commission for the Federation, if requested so to do by the Governor of a Province, may, with the approval of the Governor-General, agree to serve all or any of the needs of the Province...

17. Our entire purpose here of giving this background to the formation of Public Service Commission in India both at the Union as well as State level, was to emphasize the purpose for its establishment, which was to have an impartial and autonomous body which should select the best possible persons for Government posts, and to have fairness and transparency in the procedure. The present dispute which is before this Court reflects this concern.

18. Article 320(3)(a) of the Constitution, *inter alia*, states that the State Public Service Commission *"shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts"*. The provision appears to be mandatory as the words *"shall be consulted"* suggest. All the same, the learned counsel for the respondents would rely on a 1957 Constitution Bench decision of this Court in ***State of U.P*** *v.* ***Manbodhan Lal Srivastava 1957 SCC OnLine SC 4*** which had laid down that the provision is not mandatory but merely directory.

19. The above decision is binding on us. Yet, we must examine the context in which the above judgment was rendered. The context is important. Although the findings in the judgment are generally worded, this Court in ***Manbodhan Lal***

Srivastava was not dealing with Article 320(3)(a), as is the case before us, but was concerned with Article 320(3)(c) i.e. a disciplinary matter in an individual case. In ***Manbodhan Lal Srivastava***, a government servant who was posted as an officer-on-special-duty in the Education Department from 1948 to 1951 was accused of giving favours to his friends and relatives, while working in a Book Selection Committee, as he had approved books written by his 14 year old nephew and other publishers from whom he had taken certain money on interest. In August 1952, he was suspended from service and a departmental enquiry was conducted against him. On the recommendations of the departmental enquiry report, the Government issued a show cause notice under Article 311(2) of the Constitution and finally, after hearing the concerned employee, the Government issued a notification reducing his rank and compulsorily retiring him. These were the facts of the case before this Court.

20. Article 320(3) speaks of a variety of matters where the Commission is to be consulted- (a) Recruitment in Service and (c) disciplinary matters, being two such instances. Whereas Article 320(3)(c) is generally concerned with

individual matters relating to disciplinary proceedings, Article 320(3)(a) deals with policy issues where an entire recruitment process is at stake. ***Manbodhan Lal Srivastava***, was a case dealing with Article 320(3)(c), and not with Article 320(3)(a), which is before us.

21. Another question in ***Manbodhan Lal Srivastava***, was whether Article 311 of the Constitution of India is subject to Article 320(3)(c). Para 4 of the Judgment reads like this:

> *"Hence, the main question in controversy in Appeal No. 27 of 1955, is whether the High Court was right in taking the view that Article 311 was subject to the provisions of Article 320(3)(c) of the Constitution, which were mandatory, and as such, non-compliance with those provisions in the instant case, was fatal to the proceedings ending with the order passed by the Government on September 12, 1953."*

22. The judgment also restricts itself to the facts relating to Article 320(3)(c). This is how it concludes :

> *"13. In view of these considerations, it must be held that the provisions of Article 320(3)(c) are not mandatory and that non-compliance with those provisions, does not afford a cause of action to the respondent in a court of law. It is not for this Court further to consider what other remedy, if any, the respondent has.*

Appeal No. 27 is, therefore, allowed and Appeal No. 28 dismissed. In view of the fact that the appellant did not strictly comply with the terms of Article 320(3)(c) of the Constitution, we direct that each party bear its own costs throughout."

23. Thus, it was in the background of the above facts that it was held by this Court that consultation with the Commission to be directory and not mandatory. ***Manbodhan Lal Srivastava*** also emphasized the purpose of the proviso to Article 320(3) of the Constitution which states that the Governor of a State is empowered to make regulations specifying the matters in which it is not necessary for the State to consult the Public Service Commission. This is what was said by this Court:

"7…Perhaps, because of the use of the word "shall" in several parts of Article 320, the High Court was led to assume that the provisions of Article 320(3)(c) were mandatory, but in our opinion, there are several cogent reasons for holding to the contrary. In the first place, the proviso to Article 320, itself, contemplates that the President or the Governor, as the case may be, "may make regulations specifying the matters in which either generally, or in any particular class of case or in particular circumstances, it shall not be necessary for a Public Service Commission to be consulted".

The words quoted above give a clear indication of the intention of the Constitution makers that they did envisage certain cases or classes of cases in which the Commission need not be consulted. If the provisions of Article 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary. If it had been intended by the makers of the Constitution that consultation with the Commission should be mandatory, the proviso would not have been there, or, at any rate, in the terms in which it stands. That does not amount to saying that it is open to the Executive Government, completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specifically provided for, in order, first, to give an assurance to the Services that a wholly independent body not directly concerned with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and secondly, to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public services. It is, therefore, incumbent upon the Executive Government, when it proposes to take any disciplinary action against a public servant, to

consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation."

(Emphasis Provided)

Thus, even if, for arguments sake, consultation with Commission is held to be directory then also there is no doubt that once Regulations are framed these are to be followed, "in letter and spirit".

24. In other words, this Court in ***Manbodhan Lal Srivastava***, had recognised the importance of Regulations framed under the proviso to Article 320(3) of the Constitution and had cautioned against the casual bypassing of the Regulations. In the case at hand, Regulations as contemplated under the Proviso were already in existence in Punjab known as Punjab Public Service Commission (Limitation of Functions) Regulations, 1955. For our purposes, it is relevant to note that with these Regulations the State had taken out certain posts outside the purview of the Commission. Admittedly, the posts of Assistant Professors and Librarians in Degree Colleges were not amongst them. In other words, these posts were within the purview of the Commission. Thus, selection of these posts was within the purview of the State

Commission, and it was mandatory that it ought to be consulted.

25. The respondents have tried to meet this deficiency by stating that the State had amended the 1955 Regulations in March 2022 (by retrospective effect), by mentioning these posts in the 1955 Regulations and these posts were then taken out from the purview of Commission. All the same, we are unable to accept this argument inasmuch as the amendment was made after concluding the entire recruitment process and giving appointment letters to the selected candidates. It was hence a *post facto* exercise. The Government had already made its selections on the posts which could only have been done by the Commission under Article 320 of the Constitution of India.

26. This apart, the 1955 Regulations prescribed a procedure under which posts within the purview of the Commission could be withdrawn. Part III-B and Part III-C of the *'Regulations and Instructions Governing the Work of the Punjab Public Service Commission'* provide a procedure for the exclusion of posts/services from the purview of the Commission. Regulation 20 reads as under:

"20. For exclusion of posts/services and other matters from the purview of the Punjab Public Service Commission, the following procedure is to be followed:

(i) Individual proposals for taking out posts from the purview of the Commission would be processed by the Administrative Departments 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 Public Service Commission by making a self-contained reference to the Commission.

(ii) 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. 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.

(iii) After the proposal of the Administrative Department is approved by the Council of Ministers, necessary action to amend the Punjab Public Service Commission (Limitation of Functions) Regulations, 1955 would be taken by the Department of Personnel and Administrative Reforms."

27. Further, Part III-C of the Regulations provides that in cases where a difference of opinion between a Department of Government and Public Service Commission arises then what is to be done. Regulation 21 reads as under:

> *"21. In order to secure uniformity of practice in cases of difference of opinion between a Department of Government and the Commission and to ensure that the Commission is duly consulted in all cases in which such consultation is necessary, all cases, in which there is difference of opinion between a Department and the Commission, should be referred to the Chief Minister.*
> *22. The procedure for submitting cases to the Chief Minister should be that whenever as department finds itself unable to arrive at an agreement with the Commission, the cases should be sent over to the Chief Secretary on an early stage, if possible before any decisive action is taken..."*

28. It is admitted that in the present case the required procedure was not followed. In relation to 160 posts of Assistant Professor and 17 posts of Librarians, the Department had sent a reference to take the posts out of the purview of the Commission, but the Commission could

not take any decision, in the absence of its Chairperson; a post which remained unfilled for long years. Meanwhile the concerned department proceeded without the views of the Commission. 931 posts of Assistant Professors and 50 posts of Librarians; admittedly with the Commission, pending recruitment as requisitioned by the State itself, and not taken out of the purview of the Commission, were also added and the advertisement inviting applications for the posts was issued on 19.10.2021. On the same day, the Department wrote to Commission to return its requisition sent to Commission for these posts. The Commission, however, on 16.11.2021 wrote to the Department disagreeing with the idea of taking the posts out of the purview of the Commission since the action as required at the end of the Government was not followed. Without any further action, the examinations were conducted between 20th to 22nd November, 2022.

29. It was after the selection and appointments were made that retrospectively on 26.03.2022 an amendment was made taking out these posts out of the purview of the Commission. The learned Single Judge has rightly

observed that the retrospective amendment to the 1955 Regulations, which was made much after the conclusion of the recruitment process, was nothing but a response to the Writ Petitions which had been filed by this time by the appellants. The learned Single Judge also notes that in the last 30 years, five advertisements had been issued for filling of posts of Assistant Professors/Lecturers[6] and these selections were to be conducted by the Commission. The State never took the recruitment for these posts in its hands.

30. What was the need to bypass the Commission in the present case? The learned counsel who appear for the appellants would argue that a new Government was formed in Punjab in September, 2021 which had to face elections in February, 2022 and the burning hurry to make selections and appointments to more than 1000 such posts, on the eve of State elections was an act of political pragmatism, and nothing more.

31. In case the State government was dissatisfied with the manner in which the Commission was conducting the recruitment (an argument which appears to have found

6 Now the posts of Lecturers have been re-designated as Assistant Professors.

favour with the Division Bench), then it ought to have followed the due procedure and withdrawn the posts from the purview of the Commission in accordance with the 1955 Regulations. The case at hand is a prime example where Commission's role was totally eliminated in the recruitment and well considered selection parameters, prescribed by an expert body, like UGC, were replaced with a simple Multiple-Choice Question type test, which is unheard of where appointments for the posts of Assistant Professor in degree colleges are concerned.

32. Let us for the moment keep aside the ground of political expediency and look at what transpired leading to the volte face insofar as the selection entrusted to the Commission as early as in January 2021. At the risk of repetition, the decision of the Council of Ministers on 17.09.2021, as approved by the Chief Minister was to take out 160 posts of Assistant Proffesors and 17 posts of Librarians from the purview of the Commission, which were the freshly created posts in the newly established Colleges. The selection committee proposed for the said exercise was also to be Chaired by a Former Chairman of the UGC. On 20.09.2021,

a new Government took over and on 09.10.2021, a committee headed by the Secretary, Department of Higher Education reviewed the earlier decisions and constituted two separate Committees, each headed by the Vice-Chancellors of the two Universities and the selection criteria was confined to a written test. The proposal was put up before the Chief Minister, with the observation that it shall subsequently be placed before the Council of Ministers. Though the Chief Minister accepted the proposal on 13.10.2021, it was never placed before the Council of Ministers and a Memo was issued on 18.10.2021 including the entire posts of Assistant Professors and Librarians available, to be filled up. As noticed above the decision to remove the said posts from the purview of the Commission was taken much later, after the selection process stood completed.

33. Let us also understand the scheme of UGC Regulations. Entry 66 of List I of Schedule VII of the Constitution empowers Union to make laws relating to *"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions"*. Under this entry, the Parliament had enacted the UGC Act, 1956

setting up an expert body named UGC for the purposes of the Act, which is clear from the Preamble of the UGC Act which reads as follows:

> *"An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission."*

34. Under provisions of the UGC Act, UGC frames Regulations from time to time setting qualifications and other standards for teaching and non-teaching staff. Under Section 26(1)(e) and (g)[7], the UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 were framed. These Regulations set the minimum eligibility criterion for the appointment to various posts including Assistant Professors and Librarians. A method of selection to these posts is also provided in the 2010 UGC Regulations which has not been

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7 The Commission may, by notification in Official Gazette, make regulations consistent with this Act and the rules made thereunder-

(a) …

(b) …

…

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction.

(f) …

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

followed in the present case. To this, the private respondents as well as the State have taken the stand that these Regulations are directory in nature and non-compliance of these Regulations would not vitiate the recruitment.

35. The respondents would place reliance upon ***Kalyani Mathivanan*** *v.* ***KV Jeyaraj & Ors. (2015) 6 SCC 363*** to contend that UGC Regulations are not binding on the State if the State has not adopted the UGC Regulations 2018 which were in force at the relevant time, as was the case here. What were adopted by the State in the present case were the 2010 UGC Regulations, which stood superseded by this time by the subsequent Regulations of 2018 of UGC which were not adopted by the State till the completion of recruitment process.

36. All the same, the adoption of 2010 UGC Regulations by the State vide order dated 30.07.2013 was an adoption by incorporation and not an adoption by mere reference. This means that the 2010 UGC Regulations were in force in the State of Punjab despite its repeal by the 2018 Regulations by the UGC. This is clear from the intention and purpose of the order dated 30.07.2013 where it was stated in no uncertain terms that the 2010 Regulations are being adopted with a

view to raise the standard of Higher Education in the State, with a specific mention of adoption of API Scores. Now API as we know means Academic Performance Indicator which is a method used in Higher Education to assess the quality and merit of teachers in Higher Education which would include teaching experience and research and academic contribution, which are extremely relevant factors to judge the merit of a teacher in Higher Education. The relevant part of the order dated 30.07.2013 reads as follows:

> *"With a view to raise the standard of Higher Education in the State of Punjab, the Notification issued by the U.G.C dated 30.06.2010 and 14.06.2013 pertaining to governing the appointment and promotion of Principals/Professors/Associate Professors/Asst. Professors, the relevant API scores with modifications mentioned below are ordered to be applied in the Universities, Govt, aided and private colleges : -*
> *1. The term/tenure of the Principal of a private college is raised from 5 to 10 years.*
> *2. D.P.T. Punjab or his representatives will be associated with the selection committee constituted for the appointment of Principals/Asst. Professors (covered under Grant-in-aid posts) in private colleges."*

37. The distinction between adoption by incorporation as opposed to reference has been explained by Bhagwati, J., speaking for a three-judge Bench of this Court in ***Mahindra & Mahindra Ltd. v. Union of India, (1979) 2 SCC 529***, in the following terms:

> *"…It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation. Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted. Such was the case in Collector of Customs v. Nathella Sampathu Chetty [AIR 1962 SC 316 : (1962) 3 SCR 786] and New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise [(1970) 2 SCC 820 : AIR 1971 SC 454 : (1971) 2 SCR 92] . But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature,*

where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute…"

38. The distinction here is that in case of adoption by incorporation, the subsequent amendment or repeal of the incorporated statute will be of no consequences on the incorporation. The adoption then becomes frozen at the point in time when the incorporation was made. But the question whether a provision of law is adopted by reference or incorporation also depends upon the language of the order/statute in which such provision is being adopted. It may also depend upon the conduct of the State and how it has been recognised and accepted in that State. 2018 UGC Regulations may have repealed the 2010 UGC Regulations but still they were being considered and recognised in the State of Punjab for all purposes, even after its repeal. We

have already referred above the order dated 30.07.2013 whereby the State Government had adopted 2010 Regulations and the reasons assigned by the State Government in doing so which was to uplift the standard of higher education.

39. Further the memorandum passed by Council of Ministers on 17.09.2021 makes it clear that the State of Punjab was still referring to the 2010 UGC Regulations irrespective of the fact that 2010 UGC Regulations had been repealed in 2018. In this memorandum, the Council of Ministers has explicitly mentioned the 2010 UGC Regulations and also admitted that the 2010 UGC Regulations have to be followed strictly since they were adopted by the State of Punjab. The relevant portion of the said memo reads as under:

> *1.4 The UGC has already notified rules and regulations for recruitment of Assistant Professors and Librarians in its notification "UGC Regulation on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education" of 2010, which has been adopted by the Government of Punjab along with the subsequent amendments.*

The Departmental Selection Committee will strictly follow the guidelines as per above UGC notification for recruitment of 160 Assistant Professors and 17 Librarians. The relevant portion of the notification for short listing"/appointment of candidates to the post of Assistant Professor and Librarians under the University System (in University and colleges) in Appendix III Table II-C is reproduced as under:

Selection Committe e Criteria / Weightag e (Total Weightag e=100)	*a) Academic Record and Research Performance (50%)* *b) Assessment of Domain Knowledge and Teaching Skills (30%)* *c) Interview Performance (20%)*

40. Thus, officially the 2010 UGC Regulations were in force in the State of Punjab as these were adopted by way of incorporation and not by reference. The repeal of 2010 Regulations by the UGC Regulations of 2018 had no impact insofar as applicability of 2010 Regulations in the State of Punjab was concerned. Also, it is on record that after the impugned order of the Division Bench, the State adopted the 2018 UGC Regulations. This shows that the State recognises the importance of the UGC Regulations. The chief intention

of the G.O. dated 30.07.2013 is that while making selection to the posts of Assistant Professors API Scores are to be seen. This was the purpose; which negates a simple objective type test.

41. Doing away with the 2010 Regulations was also a last minute decision. In January 2021 requisition for recruitment of 931 Assistant Professors and 50 Librarians was sent by the State government to the Commission. Then, a meeting of the Council of Ministers was held on 17.09.2021 in relation to the recruitment of additional 160 posts of Assistant Professors and 17 posts of Librarians which had come up in 16 new Government Colleges where a decision was taken to remove these posts from the purview of the Public Service Commission so that recruitment can be made through a Departmental Selection Committee, which we have already mentioned above, but what is significant here is that till this time the Government had all the intentions of following the 2010 Regulations as the memorandum dated 17.09.2021 *inter-alia* states :-

> *1.4 The UGC has already notified rules and regulations for recruitment of Assistant Professors and Librarians in its notification*

"UGC Regulation on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education" of 2010, which has been adopted by the Government of Punjab along with the subsequent amendments.

The Departmental Selection Committee will strictly follow the guidelines as per above UGC notification for recruitment of 160 Assistant Professors and 17 Librarians. The relevant portion of the notification for short listing"/appointment of candidates to the post of Assistant Professor and Librarians under the University System (in University and colleges) in Appendix III Table II-C is reproduced as under:

Selection Committee Criteria / Weightage (Total Weightage=100)	*Academic Record and Research Performance (50%)* *Assessment of Domain Knowledge and Teaching Skills (30%)* *Interview Performance (20%)*

(Emphasis provided)

Till 17.09.2021, therefore, the Government had full intentions of following the 2010 Regulations. The decision

earlier was only to remove the posts out of the purview of Commission.

42. In a more recent judgment of a Division Bench of this Court in ***Gambhirdan K. Gadhvi v. State of Gujarat*** **(2022) 5 SCC 179**, it is held that UGC Regulations have a mandatory character and are binding on all universities, State or Central, that have opted to receive the financial assistance of the UGC under its Scheme dated 31.12.2008 (which later came to be incorporated as Appendix I of the 2010 UGC Regulations). In that case, what weighed in the mind of the Division Bench of this Court was the fact that the concerned University had availed of the above-mentioned UGC Scheme, and as part of the same, it had agreed to adhere to UGC regulations (2010 and 2018 regulations, in that case). As a result, the University was bound to follow the UGC Regulations for the purposes of appointment of Vice-Chancellors, and it had to amend the relevant rules/statutes to bring them in line with the UGC Regulations. This is what was said:

> *"29. It is not in dispute that the SP University is receiving Central financial assistance under the Scheme and it is included in the State Universities receiving Central financial assistance as per Section 12(b) of the UGC Act, 1956. Therefore, having adopted the UGC Scheme and implemented the same and getting Central financial assistance to the extent of 80% of the maintenance expenditure, the State Government and the SP University are bound by the UGC Regulations, 2010. The UGC Regulations, 2010 are superseded by the UGC Regulations, 2018. However, the eligibility criteria for the post of Vice-Chancellor and the constitution of the Search Committee for appointment of a Vice-Chancellor remains the same. Therefore, the State of Gujarat and the universities thereunder including the SP University are bound to follow UGC Regulations, 2010 and UGC Regulations, 2018."*

43. It was held that UGC Regulations became a part of the parent Act i.e. the UGC Act, being a piece of subordinate legislation that is laid before both Houses of Parliament. As a result, these would prevail in case there is any inconsistency between State legislation and UGC regulations, by application of the doctrine of repugnancy:

> *"50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and*

26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject "education" is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto."

(Emphasis provided)

44. UGC Regulations are made under UGC Act which was enacted by Parliament under Entry 66 of List I of the Schedule VII, whereas State Governments exercise powers under Entry 25 of the List III of the Schedule VII to make laws relating to "education". Further, it is to be noted that Entry 25 of the List III is subject to Entry 66 of List I. Hence, laws, including the subordinate legislations as in the present case, made under Entry 66 of the Union List would prevail over any law made under Entry 25 of the Concurrent List.

45. This Court in ***State of T.N. v. Adhiyaman Educational & Research Institute*, (1995) 4 SCC 104** while dealing with Entry 66 and Entry 25 of the Union List and Concurrent List, respectively, observed thus:

> *"41. What emerges from the above discussion is as follows:*
> *(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.*
> *(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to*

give effect to Entry 66 of the Union List, it would be void and inoperative.
(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.
(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case…"

(Emphasis provided)

46. In short, in the present case the UGC Regulations would be binding particularly when the State of Punjab vide its order dated 30.07.2013 had adopted 2010 UGC Regulations.

47. We may add here that what also weighed with the Division Bench of the High Court was the fact that it was the Punjab Educational Service (College Cadre) (Class II) Rules, 1976 (hereinafter '1976 Rules') which were applicable, and not the UGC Regulations. While it is true that the 1976 Rules were applicable to the recruitment but a perusal of the same shows that these only mandate that the recruitment to posts of Assistant Professors and Librarians should be through

direct recruitment. It does not prescribe any mode or method of recruitment. This aspect was rightly noticed by the learned Single Judge. As discussed in detail above, the State of Punjab itself adopted the standards and process laid down by the UGC. Therefore, it was bound to follow these Regulations, notwithstanding the 1976 Rules.

48. In short, we find that there is a total arbitrariness in the present selection. The memo of Council of Ministers dated 17.09.2021 shows that State wanted to recruit only on 160 posts of Assistant Professors and on 17 posts of Librarians through departmental selection committee on an urgent basis as these were for the newly opened colleges. As we have already stated, even in those cases, the recruitment was to be made by following the UGC Regulations. Next, the 931 and 50 posts of Assistant Professors and Librarians, which were lying vacant and in regard to which requisition had already been sent to Commission, were added and it was decided that the sole basis of the selection would be a single exam. Moreover, a mere 45-day deadline was set for the commencement and conclusion of the whole recruitment process and ultimately within a span of two months, not only

was the recruitment process concluded, but even appointment letters were issued. One cannot fail to notice the burning haste with which this entire exercise was undertaken by the powers that be. It has thus been repeatedly pressed by the appellants that all this was motivated by political exigency in the form of the impending Assembly elections in the State of Punjab.

49. An attempt was made by the State and the private respondents to argue that the selection process which was ultimately adopted was in any case better than the one prescribed by the UGC. The logic given is that a written test would be impartial and will be same to all, whereas there are always chances of abuse, favouritism, nepotism, even corruption in a test based on API. Written test is also less time consuming it was argued. However, we are not at all convinced with this argument. The recruitment for teaching posts in higher education on the basis of scores in an objective type written test, on grounds that such a test is non arbitrary whereas *viva voce* and appreciation of other aspects such as academic work could be abused and could be unfairly applied, is an argument which is puerile to say

the least. Abandoning a time tested and uniformly followed method of selecting Assistant Professors in higher education with Multiple-Choice Questions based written examination is unacceptable; especially when the State itself has adopted the selection process laid down by the expert body which is also the apex statutory body, the UGC constituted under Entry 66 in the Union List of the Seventh Schedule of the Constitution.

50. The State cannot defend such an arbitrary practice in the garb of a policy decision. We have to keep in mind that these were the posts of Assistant Professors for which a specialized body like UGC has prescribed a process for the selections, which includes appreciation of academic work of a candidate, his/her performance in *viva-voce*, amongst others. Just a simple Multiple-Choice Question based written exam cannot be sufficient to check the suitability of such candidates. Even if it is, then also, in the present case, the sudden replacement of a time tested recruitment process with a new process, was not only arbitrary but was done without following the due procedure, which vitiates the entire process. Even if we ignore the argument of political

expediency, we cannot but notice the executive hegemony in reversing a decision of the Council of Ministers, without reference to the said body. It also undermines the quality of selection, since there was no comprehensive exercise to examine the merit of a candidate. The written test did not challenge the innovative faculty of a candidate. One was not required to give an elaborate answer to a question as is done in a subjective type of test. Instead, it was an objective type of test in which the correct answer was to be given from multiple-choice of answers. The elimination of the *viva-voce*, which is such a vital component in the overall appreciation of merit of a candidate, who has to teach in a higher education institute, was another grave error.

51. All this goes on to show that the intention of the authorities was to conclude the exercise as quickly as possible; which though sought to be justified on grounds of expediency in filling up the posts, undermines the selection by reason of no qualitative assessment of the candidates carried out. The learned Single Judge rightly observed that this approach casts serious doubts on the fairness of the process and the impartiality of the selectors, who were likely to be under

pressure to complete the exercise within the timeline, regardless of the quality of the selections. The selection process is further impaired by the inclusion of posts already requisitioned to the Commission, which as per the Regulations were required to be filled up by the Commission and the apparent deviation from the UGC Guidelines which were adopted by the State and required to be followed, in this very selection, by the Council of Ministers.

52. The State and its instrumentalities have a duty and responsibility to act fairly and reasonably in terms of the mandate of Article 14 of the Constitution. Any decision taken by the State must be reasoned, and not arbitrary. This Court has consistently held that when a thing is done in a post-haste manner, *mala fides* would be presumed, and further that anything done in undue haste can also be termed as arbitrary and cannot be condoned in law. We may refer here to a few judgments of this Court which lay down this proposition.

53. In ***Fuljit Kaur v. State of Punjab*** **(2010) 11 SCC 455**, this Court held that any State action undertaken in a hasty manner could be arbitrary State action cannot be condoned in law. This is what was said by this Court:

"25. Before parting with the case, it may be pertinent to mention here that the allotment had been made to the appellant within 48 hours of submission of her application though in ordinary cases, it takes about a year. The appellant had further been favoured to pay the aforesaid provisional price of Rs. 93,000 in four instalments in two years, as is evident from the letter dated 8-4-1987. Making the allotment in such a hasty manner itself is arbitrary and unreasonable and is hit by Article 14 of the Constitution. This Court has consistently held that "when a thing is done in a post-haste manner, mala fides would be presumed". Anything done in undue haste can also be termed as "arbitrary and cannot be condoned in law". [Vide S.P. Kapoor (Dr.) v. State of H.P. [(1981) 4 SCC 716 : 1982 SCC (L&S) 14 : AIR 1981 SC 2181] , M.P. Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain [(1995) 1 SCC 638 : 1995 SCC (L&S) 364 : (1995) 29 ATC 159] , Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159] and ZenitMataplast (P) Ltd. v. State of Maharashtra [(2009) 10 SCC 388] .] Thus, such an allotment in favour of the appellant is liable to be declared to have been made in arbitrary and unreasonable manner. However, we are not inclined to take such drastic steps as the appellant has developed the land subsequent to allotment."

(Emphasis provided)

54. In ***Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*** **(2004) 2 SCC 65**, this Court reiterated the above principle while dealing with a case where the change in the office-bearer had resulted in a hasty and arbitrary change in the policy, which is also the case here. The relevant observations in the said judgment are as follows:

> *"24. The impugned order was preceded by a direction of the Home Minister on 7-9-1996. A change in the opinion came into being only upon change in the holder of the office and that too within a few days. Not only had the matter not been admittedly placed on the agenda of the meeting dated 25-7-1997, the same was considered showing undue haste.*
> *25. In S.P. Kapoor (Dr) v. State of H.P. [(1981) 4 SCC 716 : 1982 SCC (L&S) 14 : AIR 1981 SC 2181] this Court held that when a thing is done in a post-haste manner, mala fide would be presumed, stating: (SCC p. 739, para 33)*
> *"33. … The post-haste manner in which these things have been done on 3-11-1979 suggests that some higher-up was interested in pushing through the matter hastily when the Regular Secretary, Health and Family Welfare was on leave."*
>
> (Emphasis provided)

55. In ***Zenit Mataplast (P) Ltd. v. State of Maharashtra*** **(2009) 10 SCC 388**, this Court laid down the general principle that

State action should be grounded in sound principles and should not be unpredictable or without basis. This Court noted as follows:

> *"27. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. The decision should be made by the application of known principles and rules and in general such decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law (vide S.G. Jaisinghani v. Union of India [AIR 1967 SC 1427] , AIR p. 1434, para 14 and Haji T.M. Hassan Rawther v. Kerala Financial Corpn. [(1988) 1 SCC 166 : AIR 1988 SC 157])."*
>
> (Emphasis provided)

56. In the present case there are multiple deficiencies, as stated above. The giving away of a rigorous criteria laid down in the UGC regulations with a single, multiple-choice question based written test, and the complete elimination of the *viva-voce*, all establish the arbitrary nature of the exercise which

cannot pass the test of reasonableness laid down under Article 14 of the Constitution. Hence, the learned Single Judge had rightly struck down the entire selection process, and the Division Bench of the High Court erred in interfering with that conclusion.

57. Lastly we need to state that it is a settled principle that when the law prescribes a thing to be done in a particular manner, then it should be done in that manner alone. [***See:*** ***Cherukuri Mani*** *v.* ***Chief Secretary, Govt of Andhra Pradesh & Ors. (2015) 13 SCC 722, Dharmin Bai Kashyap*** *v.* ***Babli Sahu (2023) 10 SCC 461, Nazir Ahmed*** *v.* ***King-Emperor (LR 63 IA 372***), ***Babu Verghese & Ors.*** *v.* ***Bar Council of India & Ors. (1999) 3 SCC 422]***

58. True, the State is entitled to change its policy, yet a sudden change without valid reasons will always be seen with suspicion. Even in cases where there is no statutory prescription of any particular way of doing a thing, the executive must observe the long-standing practice, and a deviation from such a practice would require passing the muster of reasonableness, which is a facet of Article 14 of the Constitution. In this regard, this Court in ***Bannari Amman Sugars Ltd.*** *v.* ***CTO (2005) 1 SCC 625*** observed that:

> *"9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose…"*

In the case at hand, the State did not adhere to UGC Regulations and took the posts out of the purview of the Commission without following the procedure prescribed under the law. And this was done suddenly without any valid reason and thus, it would amount to arbitrariness and cannot be sustained in the eyes of law. In ***Sivanandan C.T.*** *v.* ***High Court of Kerala (2024) 3 SCC 799***, the Constitution Bench of this Court observed that:

> *"45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14."*

59. As far back as in the year 1979, this Court in ***Ramana Dayaram Shetty*** *v.* ***International Airport Authority of India, (1979) 3 SCC 489,*** speaking through Justice PN Bhagwati, had said that government jobs are also a kind of wealth and the State cannot distribute or withhold such wealth on the basis of arbitrary principles. The relevant portion from the said case law is as follows:

> *"**11.** Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services,*

contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth.....The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith...

***12**...It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from*

such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

In the present case, the State has miserably failed to justify the departure from the standard norms of the recruitment process. It has failed to give any valid reason for not adopting the UGC Regulations and avoiding the Public Service Commission in the recruitment in question. Moreover, as discussed earlier, the reason for this departure were narrow political and clearly arbitrary.

60. Before parting, we would like to observe that we are aware of the fact that quashing of the entire recruitment process may cause hardships for the selected candidates, but at the same time, there is no equity in the favour of selected candidates as challenge to the recruitment was made during the pendency of the process and appointments were subject to the Court orders. A gross illegality like the present recruitment cannot be ignored.

61. Thus, considering the entire facts of the case, we allow these appeals and set aside the order dated 23.09.2024 passed by the Division Bench of the Punjab and Haryana High Court and quash the entire recruitment and direct the State to initiate the recruitment process as per the 2018 UGC Regulations which are now in force in the State of Punjab.

62. Pending application(s), if any, stand(s) disposed of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[K. VINOD CHANDRAN]

NEW DELHI;
JULY 14, 2025.