

Before D. S. Tewatia and S. S. Sodhi, JJ.

AMRIK SINGH AND OTHERS,—Appellants.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 291 of 1984.

May 29, 1985.

Constitution of India 1950—Article 226—Punjab Police Rules 1934—Rule 13.7 (as amended in 1972)—Necessary parties to a writ petition—Personnel of the Punjab Armed Police—Executive instructions prescribing a written test to judge suitability for being sent to the Cadre Course—Candidates selected and sent to the Course—Executive instructions struck down as void and inoperative in a writ petition and selection of the candidates quashed—Such candidates not made a party to the writ petition—Whether bound by the decision quashing the instructions and the selection—Personnel not selected in the test but claiming to be senior—Such personnel—Whether could override the rights of the selected candidates in the matter of promotion on the ground of latter's selection under void instructions.

Held, that where a validity of a policy, rule or statutory provision is alone under challenge and no relief against an individual on fact relevant and peculiar to the petitioner and the given affected person is sought by the petitioner, then such persons as may be affected as a result of the declaration given by the Court regarding the validity of the given policy, rule and the statutory provision would not be necessary party to such writ petitions. This principle, however, is not attracted where the private respondents some of whom are petitioners in the earlier writ petition had not only sought a declaration to the effect that the executive instructions issued by the Inspector General of Police were illegal, but also sought the relief that the selection made on the basis of the said instructions be quashed and that they being senior to the persons selected were alone entitled to be admitted to the Cadre Course in question in preference to them. In the earlier writ petition, the High Court not only held the instructions to be void but also expressly quashed the selection to the admission of the Cadre Course and directed the authorities to admit the private respondents to the Cadre Course as they were considered senior to those who had been sided to undergo that course. Therefore, the observations made in the earlier writ petition would not, in any manner affect adversely those who had been selected in the test with the result that those who had undergone the Cadre Course of the lower school course

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earlier were entitled to be considered for being brought on the 'C' list and to be promoted as Head Constables from the date they had been so promoted as on that date the private respondents were yet undergoing the Cadre Course/lower school course and they, therefore, in terms of rule were not even eligible to be considered for promotion to the post of Head Constable as the successful completion of the lower school course was *sine qua non* for promotion to the next higher post of Head Constable. Once the Constables who were eligible for further promotion and stood promoted to the next higher post, the Constables who were their senior as Constables having also passed the lower school course after their so called junior had been promoted to the post of Head Constable, cannot be legally permitted to flaunt their seniority as Constables and seek promotion as Head Constable in point of time prior to those who although were junior to such Constables but were alone eligible to be promoted on the date they were so promoted to the post of Head Constables. (Paras 25, 26 and 34).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 19th January, 1984 passed by Hon'ble Mr. Justice I. S. Tiwana in C.W.P. No. 1504/1981.

R.A. No. 38 of 1984.

Review Application Under Order 47, Rule 1 read with section 151 of the Code of Civil Procedure, praying that the order of dismissal in L.P.A. No. 291 of 1984 be recalled and the said L.P.A. be admitted for hearing along with L.P.A. No. 370 of 1984 and 371 of 1984.

Kuldip Singh, Sr. Advocate (S. S. Nijjar, Advocate with him),
for the Petitioner.

H. S. Riar, D.A.G., (Pb.), for Respondent Nos. 1 to 3.

J. L. Gupta, Sr. Advocate (Rajiv Atma Ram with him), for
Respondent Nos. 4 to 24.

JUDGMENT

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(1) Appellants in LPAs No. 291 and 368 of 1984 and the private respondents in these two appeals and also the respondents Nos. 1 to 21 in LPA No. 370 of 1984 and respondents Nos. 1 to 42 in LPA No. 371 of 1984 are the personnel of the Punjab Armed Police. The above-said personnel for the purpose of judging their suitability for being

sent to the Cadre Course equivalent to the lower School Course, were made to take, *inter alia*, a written test in terms of teleprinter instructions Annexes P. 4 and P. 5 issued by the Dy. Inspector General of Police, Punjab. The private respondents in LPAs No. 291 and 368 of 1984 and respondents Nos. mentioned above in LPAs No. 370 and 371 of 1984 failed in the test whereas the appellants in LPAs Nos. 291 and 368 of 1984 (respondents Nos. 22 to 91 in LPA No. 370 of 1984 and 43 to 112 in LPA No. 371 of 1984) succeeded and therefore, were admitted to undergo the said course at Phillaur. Some of the private respondents challenged the legality of the said instructions and the selection of the appellants for the said course through different writ petitions including Civil Writ No. 1775 of 1975, which was allowed by the Division Bench,—*vide* its judgment dated 6th October, 1975. The operative part of the said judgment is in the following terms:—

“The Punjab Armed Police is a wing of the general police though the duties to be performed by the Punjab Armed Police constabulary are slightly different from those assigned to the District Police constabulary. The contention raised on behalf of the official respondents that both the constabularies, referred to above are governed by the Punjab Police Rules, 1934, is also not contested on behalf of the petitioners, as stated by their learned counsel at the Bar. Rule 13.7 of the Rules provides for the criteria for selection of constables of the District Police for admission to the Promotion Course conducted at the Police Training College, Phillaur. The procedure for selection of candidates who are to be sent to the Promotion Course is contained in sub-rule (2) of Rule 13.7 of the Rules.....

* * * *

The only contention highlighted in the petition and pressed on behalf of the petitioners is that in the absence of any provision in the Rules for regulating promotions in the Punjab Armed Police from the rank of constables to that of Head Constables or for any other rank, the Inspector General of Police, Punjab, had no jurisdiction to issue executive instructions laying down the manner of selection by departmental Promotion Committees at various levels for selecting candidates to attend the training courses. Reliance in this behalf has been

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placed on the decision rendered by a Full Bench of this Court reported as (*Sardul Singh Head Constable v. Inspector General of Police, Punjab and Others*), (1).....

* * * *

It may be observed at this stage that the executive instructions issued by the Inspector General of Police in memo No. 21146—206/B, dated August 25, 1984 are quite analogous to those issued in respect of the members of the Punjab Armed Police by means of his orders dated 6th February, 1975 and 21st February, 1975, which are impugned in the present case. The observations of their Lordships of the Full Bench would, therefore, apply with equal force to these instructions.....

* * * *

However, the learned counsel appearing for respondents 3 to 9, submitted that the Cadre Course had already commenced and if these respondents are now withdrawn from the said Course midterm, it would result in great hardship to them and they would be put to inconvenience and even to financial loss. We are inclined to agree to this submission. The present Course has commenced only a few days ago, i.e., on October 1, 1975. The next Training Course is to commence after six months. In these circumstances, we direct respondents Nos. 1 and 2 to allow the petitioners to join the present Cadre Course with immediate effect."

Another two writ petitions 6900 and 7124 of 1975 filed by some of the private respondents were allowed by a Single Bench following the Division Bench decision rendered in Civil Writ 1775 of 1975. The operative part of this judgment runs as under:—

"For the aforesaid reasons, the selection in question for the Cadre Course held in April, 1975 is held to be void and is quashed. The petitioners being senior are entitled to be sent to the Cadre Course which is, I am told, to commence in the second week of April, 1976. The respondents are, therefore, directed to allow the petitioners

in both the writ petitions to join the Cadre Course at Phillaur.”

* * * *

In pursuance of the directions of the Court given in the aforesaid judgments, some of the private respondents herein, who were petitioners in those writ petitions, were admitted to the Cadre Course, which they completed in 1977, whereas the appellants, who had not been ordered to be recalled by the Court, completed the said course in 1976. The Department brought the appellants on List 'C' with effect from 25th August, 1975 and they were promoted as Officiating Head Constables with effect from 6th April, 1976. The Department, (*perhaps on the representation of the private respondents to the effect that they too had completed the course and since they were senior as constables to the appellants, the appellants could not have been brought on List 'C' or promoted as Officiating Head Constables till the cases of the private respondents had been considered*) initiated steps for the reversion of the appellants and delisting their names from List 'C',—*vide*, order dated 16th September, 1976.

(2) The persons likely to be affected including the appellants challenged the aforesaid proposal of their reversion through a number of separate writ petitions — one of them being Civil Writ No. 6975 of 1976. The High Court stayed reversions by way of interim measure. The writ petitions were finally allowed by a Division Bench on 1st November, 1979. The operative part of that judgment is in the following terms:—

“In the light of the aforesaid authoritative enunciation it is evidence that the petitioners who were neither party or privy to the C.W. No. 6900 of 1975 (*Lehamber Singh and others v. State of Punjab*) and C.W. No. 7124 of 1975 (*Naresh Kumar and others v. State of Punjab*) cannot be adversely affecttd by any observation therein.

Accordingly all these writ petitions are hereby allowed and the reversion of the petitioners from the post of Head Constables or the delisting of their names from List C-1 is hereby quashed.

.....”

The private respondents then filed two separate writ petitions in this Court, namely, Civil Writ Nos. 1504 of 1981 and 470 of 1982.

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Their grievances as reflected in the said two petitions, in substance, was that the appellants herein (respondents Nos. 4 to 73 in Civil Writ No. 1504 of 1981 and respondents Nos. 4 to 73 in Civil No. 470 of 1982) had been given earlier promotions and confirmations as Head Constables only on account of their having completed the Cadre Course earlier as a result of their illegal selection in pursuance of void and thus non-existent instructions issued by the Inspector-General of Police, and that too despite the High Court having not only held the instructions to be void but actually having quashed the selection made in terms thereof. In other words, the illegal march stolen over the private respondents by the appellants as a result of their having been admitted to the Cadre Course earlier as a result of illegal selection in terms of the void instructions, they lamented, was being allowed to be perpetuated.

(3) The Department took up the stand that when a compliance of the orders of the High Court rendered in Civil Writs Nos. 1775 of 1975 and 6900 of 1975 the department's plan to remove the names of the appellants from List C-1 and further to revert them to the rank of constables were in progress, the appellants and their like filed Civil Writs Nos. 6975, 6585, 6687, 6703, 6716, 6807, 6909, 6871 and 2593 of 1976 and 1486 of 1979 in the High Court. The High Court stayed the reversion of the appellants (the petitioners in the aforesaid writ petitions) and the writ petitions were finally allowed by the Division Bench on the ground that the appellants (petitioners in those writ petitions) were neither party or privy to the Civil Writs Nos. 6900 of 1975 and 7124 of 1975 and, therefore, they should not be adversely affected by any observations in the judgments in those two writ petitions. The Department asserted that the private respondents (petitioners in the aforesaid two writ petitions) had been brought on List C-1 with effect from 1st April, 1979 and had also been promoted to the rank of Officiating Head Constables with effect from 17th September, 1979, 29th October, 1979, 15th November, 1979 and 20th February, 1980. It was, however, maintained that the private respondents were not entitled to the restoration of their original position.

(4) The learned Single Judge allowed by a common judgment the two writ petitions, namely, 1504 of 1981 and 470 of 1982 with the observations that if the appellants were not bound by the judgments rendered in Civil Writ Nos. 7124 and 6900 of 1975, as they were not impleaded as a party to those writ petitions, then on

a parity of reasoning adopted in Civil Writ No. 6975 of 1976 to that effect, the private respondents (petitioners in Civil Writs Nos. 1504 of 1981 and 470 of 1982) too were not, in any way, bound by the observations of the Division Bench in Civil Writ No. 6975 of 1976.

(5) It was next observed that, in any case, the relief granted by the Division Bench to the appellants (herein) was that their reversion as Officiating Head Constables and the removal of their names from List C-1 had to remain stayed despite the observations in question made in the judgments rendered in Civil Writs Nos. 7124 of 1975 and 6900 of 1975 and that the Division Bench decision did not adjudicate and determine the claim of the appellants qua the private respondents.

(6) When the appellants sought to challenge the correctness of the judgments rendered in Civil Writs Nos. 7124 and 6900 of 1975, *inter alia*, on the ground that the selection impugned therein was in accordance with the Punjab Police Rules — rule 13.7 as amended in the year 1972, the learned Judge dismissed the plea with the observation that he could not possibly sit as a Court of appeal over those judgments — those judgments in favour of the petitioners (respondents Nos. 4 to 24) having assumed finality and had come to stay and had to be given full effect to and that even though the appellants (herein) may not be bound by the observations made in those judgments, yet the State authorities could not possibly absolve themselves of the responsibility of implementing those judgments in letter and spirit as those authorities were admittedly parties to those judgments and were squarely bound by the pronouncements made therein. The writ petition was allowed with the following directions :

“I direct the respondent-authorities to consider the claim of the petitioners for promotion and confirmation with effect from the date/s all or any one of the private respondents has/have been promoted or confirmed.....”

Against this Judgment, the appellants herein (private respondents in CWP Nos. 1504/81 and 470/82) filed two separate appeals (L.P. As 291 and 368 of 1984) respectively which were dismissed *in limine* by order dated 5th March, 1984. Thereafter, against the judgment of the learned Single Judge, the State too preferred two separate appeals (L.P.As Nos. 370 and 371 of 1984) which were

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admitted by the motion Bench for a final hearing. Thereafter, the appellants in L.P.A. No. 291 of 1984 moved review application (R.A. 38 of 1984) for recalling the orders dismissing the appeal *in limine* in view of the fact that against the very judgment, two other L.P.As. Nos. 370 and 371 of 1984 had been admitted to a final hearing. The private respondents to the L.P.As. filed by the State too moved an application for reviewing the order admitting the L.P.As. filed by the State alleging that once the appeals filed against the very judgments had been dismissed, subsequent appeals filed by the State too ought to have been dismissed, otherwise two contradictory judgments would come to exist against the same order. We allowed the review application filed by the appellants in L.P.A. 291 of 1984 and dismissed the review applications filed by the private respondents to the L.P.As. filed by the State by a separate order. We thus have before us four L.P.As. Nos. 291, 368, 370 and 371 of 1984 involving a common question of law and facts and arising out of the same judgment and, therefore, a common judgment is proposed for them and wherever reference to facts is found necessary, these would be culled out from L.P.A. No. 291 of 1984.

(7) The Division Bench, which allowed Civil Writ No. 1775 of 1975 expressly held that the Punjab Police Rules of 1934 were applicable to the personnel of the armed police. Under the said Rules, rule 13.7 provided for selection of constables for being brought on List 'B' for being further admitted to the Lower School Course, which is the first course prescribed for the constables. This rule in its unamended form reads as under :

"13.7. List B (in Form 13.7) shall also be maintained by each Superintendent of Police and shall be divided into two parts :

- (1) Selection grade constables considered suitable as candidates for the Lower School course at the Police Training School.
- (2) Constables (selection or time-scale) considered suitable for drill and other special courses at the Police Training School.

Selection shall be made from this list as vacancies occur for admission to the courses concerned at the Police Training School, provided that no constable shall be considered

eligible for any such course until the entry of his name in List 'B' has been approved by the Deputy Inspector-General of the Range. Ordinarily seniority in age shall be given prior consideration in making such selections, irrespective of the date of admission to the list, and care must be taken that a constable borne on the list is not allowed to become overage for admission to the school before being selected. The restrictions on admission to the lower school course and Instructors' courses at the Police Training School limit the conditions for admission to List B. No constable shall be admitted to that list whose age is such that he cannot in the normal course be sent to the Training School before he attains the age of 30 years. No constable, who has failed to qualify at the Training School, shall be re-admitted to the list unless the Superintendent and the Principal of the School are in agreement that he is deserving of another chance of qualifying in the course; in the event of disagreement as to such a case the Deputy Inspector-General shall decide."

And the amended form of this rule as in 1972 is in the following terms :

- "13.7. (1) List 'B' in Form 13.7 shall be maintained by each Superintendent of Police. It will include the names of all constables selected for admission to the Promotion Course for Constables of the Police Training College. Selection will be made in the month of January each year and will be limited to the number of seats allotted to the districts for the year with a twenty per cent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector-General of Police on the basis of tests in parade, general law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws) interview and examination of records.
- (2) All constables—
- (a) who are middle pass and have put in more than four years of service;
 - (b) who are at least matriculates and have put in more than three years of service or

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- (c) who obtain first class with credit in the Recruits Course specified in rule 19.2; will be eligible to have their names entered on the aforesaid list, if they are not above thirty years of age on the first day of July in the year in which the selection is made:

Provided that no constable who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which selection is made will be eligible for admission to this list and if any constable whose name has been brought on this list is not sent to the Police Training College in that year he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules.

- (3) Temporary constables brought on List 'B' shall be absorbed in the regular establishment in preference to others.
- (4) No constable who has failed to qualify in the promotion course for constables shall be readmitted to List 'B', unless the Principal, Police Training College, for the reasons to be recorded in writing considers him deserving of another chance and he is still eligible. The reasons are to be communicated to the Superintendent of Police concerned."

For comparison sake, it would be appropriate to reproduce the instructions Annexure P. 4 and Annexure P. 5 issued by the Deputy Inspector-General of Police:—

"ANNEXURE P. 4
T.P.M.

From

DIG PAP JULL: CANTT.

To

COMDT. 9TH BN. PAPIADDA KOTHI, SANGRUR
COMDTS 36TH & 12ND BN PAP, FORT BAHADUR-
GARH.

Comdts. 7th, 75th 80th BN PAP (by hand) No. 1690—95/CB (')
 Constitution this office TPM No. 1477—83/CB, dated 31st
 January fulfil the following conditions are eligible to
 appear in the test for the cadre course (') (i) are Middle
 pass and put in more than four years of service or (ii) are
 Matriculate and put in three years of service and had
 obtained 1st Class with credit while passing the recruit
 course as specified in rule 19.2 PPR (1); Provided that
 no Constables who has been awarded a major punish-
 ment within a period of three years will be eligible.

Sd/-Harjinderpal Singh,
 for Deputy Inspector General,
 P.A.P. Jullundur-6.

Dated 6th February, 1975.

ANNEXURE P. 5.

T.P.M.
 UNCLASS

IMPORTANT

From

DIG PAP JULL. CITY.

To

Comdt. 9th Bn. PAP, Ladda Kothi, Sangrur.

Comdts. 36th—82nd BN, PAP, Fort Bahadurgarh.

Commndts. 7th, 17th & 80th BN PAP (By Hand).

No. 2573—79 (CB) (') Continuation this office TPM. No. 1690—
 96/CB, dated 6th February, 1975 (') All candidates who
 fulfil the following conditions are eligible to appear in the
 test for the cadre course (') Have more than five years of
 service and educated upto 6th Class or are adjudged by
 the Commandents concerned to be possessing qualifica-
 tions upto the standard (')

Sd/- Harjinderpal Singh,
 for Deputy Inspector-General,
 P.A.P. Jullundur-6".

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(8) A perusal of the amended rule 13.7 would show that it envisaged selection of constables for being brought on List 'B' for admission to the Promotion Course on the basis of a written test in the subjects mentioned therein; the performance in the drill, the service record and the performance in interview. It appears that the Department authorities were not quite clear as to whether the Punjab Police Rules of 1934 would govern the personnel of the armed police and thus the Inspector General of Police issued separate instructions virtually patterned on rule 13.7 for the purpose of selection for sending the constables in the armed police for the Lower School Course and the Promotion Course as amended in 1972 at Phillaur which he designated as Cadre Course.

(9) The counsel for the State made available to us the relevant record pertaining to the Process of selection of the Constables for admission to the cadre course allegedly carried out in terms of the instructions issued by the Inspector General of Police which were quashed and held to be void by this Court, firstly, by the Division Bench of this Court in Civil Writ No. 1775 of 1975 and, later on, by a Single Bench in Civil Writ No. 6900 of 1975.

(10) The record reveals that the selectees were tested strictly in accordance with the provisions of sub-rule (1) of rule 13.7 i.e., the selection was made as a result of their performance in parade, in law, in interview and on examination of their records.

(11) The instructions of 1964, relevant portion whereof was reiterated in Annexures P. 4 and P. 5 were held to be void in C.W.P. No. 1775 of 1975 on the ground that these had not been issued by the Government. The Division Bench observed that the instructions Annexures P. 4 and P. 5 were illegal as these had been issued by Inspector General of Police whereas only the Government could issue such supplementary instructions as per decisions of *Sardul Singh's case* (supra). The Division Bench did impliedly refer to the unamended rule 13.7 and observed that these in terms did not provide for the promotion of the Constables to next higher ranks by undergoing various training courses envisaged in the Police Rules. With respect, these observations are somewhat contradictory to the view which the Bench earlier expressed that the Police Rules of 1934 were applicable to the armed constabulary as well. Once it is held that the police rules were applicable to the Armed constabulary, then Rule 13.7 did provide for a constable's selection for lower school

course whether he is a constable of District Police or constable of an Armed Police. The course undergone by the appellants and the private respondents is, in fact, the lower school course at Phillaur which had been designated in the instructions as cadre course. The designation of the course is not of essence. The basic question is as to whether the rules are attracted to the Armed Police. Once it is held that the rules are attracted to the Armed Police, then the next question that would fall for consideration is as to whether the selection had been in accordance with the relevant rule providing for admission to a given course for a given category of police personnel. Even admitting for the sake of argument that identification of higher categories of posts in the Armed Police with the corresponding posts in the District Police may require bit of head scratching, but there cannot be any dispute about the fact that designation of the lowest rung in the Armed Police and the District Police is the same i.e., a constable constitutes the lowest rank in the two wings of the police and the first course that a constable is required to undergo is the lower school training course. Therefore, there cannot be any doubt that a constable of the Armed Police under the Police Rules which have already been held applicable to this wing of the police has to be sent to the lower training course in accordance with the relevant rule and that rule is 13.7 of the Police Rules and therefore, one has to see whether the selection had been substantially in accordance with the said rule.

(12) If it had been brought to the notice of the Court that the amended rule 13.7 too provided for test of the kind for selecting constables for lower school course/cadre course and the selection so made complied with the provisions of the said amended rule, then for ought we know the decisions of Division Bench in C.W.P. No. 1775 of 1975 and of single Bench in C.W.P. No. 6900 of 1975 might have been different.

(13) Mr. Gupta appearing for the private respondents, however, canvassed that two of the constables were not eligible in terms of amended rule 13.7 for being selected to admission to the lower school course/cadre course in that their academic qualification was less than the one that is envisaged in the said rule. These constables are Buta Singh and Gurmail Singh (wrongly mentioned as Gurmit Singh) appellants Nos. 18 and 23. They were selected, it is urged, only because the instructions prescribed the lower academic qualification i.e. only 6th class and above whereas the rule prescribed minimum academic qualification upto 8th class.

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(14) The contention advanced by Mr. Gupta in regard to the two constables is no doubt correct but then all the private respondents in terms of amended rule 13.7 had failed in the said test and they were not entitled to be admitted to the course in question. They were directed to be admitted by this Court. So it hardly lies in their mouth to challenge the eligibility even of these two constables for being sent to undergo the given course. The private respondents and these two constables both being in terms of rule 13.7 not entitled to undergo the course, but both having done so, then the one who completed the course earlier would, therefore, if the rules permit would continue to have the upper hand.

(15) Mr. Gupta's last desperate fling was that whereas rule 13.7 envisaged appointment of a promotion committee by Inspector General of Police, the instructions envisaged appointment of Promotion Committee by D.I.G. Police and therefore, the selection held by the Promotion Committee could not be considered strictly to be in accordance with rule 13.7. Even if for the sake of argument it is assumed that the Promotion Committee in the present case had been appointed by D.I.G. and not by Inspector General of Police, then that by itself would not render the selection as not being in accordance with the said rule. The material requirement of the said rule is (i) that the personnel of Promotion Committee should be of high rank; (ii) that they had judged the merit of each constable in accordance with the test envisaged in rule 13.7. Whether the high ranking Promotion Committee was appointed by D.I.G. or I.G. is not of the essence of the rule. In the present case the Promotion Committee envisaged by the instructions comprised of Superintendent of Police of the concerned District as its President and two Gazetted Officers nominated by the D.I.G. of the Range.

(16) Be that as it may, the core question that falls for consideration is as to whether the decision rendered by the learned Single Judge, as also the observations made by him therein, in Civil Writ 6900 of 1975 wherein he not only held the identical instructions of the year 1964 (of which P. 4 and P. 5 are a mere reiteration) to be void but quashed the selection of the appellants herein for admission to the Lower School Course/Cadre Course, was binding upon the appellants herein, to which, the answer, in turn, would depend on the answer to the question as to whether the appellants herein were necessary party to that writ petition.

(17) Mr. J. L. Gupta appearing for the private respondents contended that the appellants were not necessary party to the writ petition Nos. 1775 and 6900 of 1975 or any writ petition seeking the same relief, for in those writ petitions, the private respondents had merely sought the determination of the question pertaining to the legality of the instructions issued by the Inspector-General of Police and when such is the case, there is ample authority in support of the aforesaid contention. In this regard, Mr. Gupta sought support from the Supreme Court decision in the *General Manager, South Central Railway, Secunderabad and another v. A. V. R. Sidhanti and others* (2), in which the Division Bench decision of Andhra Pradesh High Court reported in *B. Gopalaih and others v. Government of Andhra Pradesh* (3) and Division Bench decision of Delhi High Court reported in *J. B. Sachdev and others v. Reserve Bank of India, New Delhi* (4), had been expressly approved. Mr. Gupta also referred us to a D.B. decision of the Gujarat High Court in *N. K. Dholakia and others v. State of Gujarat etc.* (5), besides two latter decisions of the Supreme Court in *State of U.P. and another v. Ram Gopal Shukla* (6), *A. Janardhan v. U.O.I. and others* (7) and a Single Bench decision of this Court rendered in *Pyare Lal v. State of Punjab etc.* (8).

(18) Sarkaria, J., who delivered the opinion for the Bench in the *General Manager, South Central Railway, Secunderabad and another's case* (supra) while making the following observations, had clearly observed that where relief against any individual is not sought and the party had merely required the Court to declare either a certain policy or a statutory provision as being *ultra vires* or void, then to such a case declaratory relief sought from the Court, only the Government would be a necessary party and when the declared view of the Court is given effect to by the Government, such a person would not be a necessary party, he would only be a proper party:

“.....It is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules

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- (2) 1974(1) S.L.R. 597.
 - (3) A.I.R. 1969 A.P. 204.
 - (4) I.L.R. (1973) II Delhi 392.
 - (5) 1979(3) S.L.R. 766.
 - (6) 1981(2) S.L.R. 3.
 - (7) 1983(2) S.L.R. 113.
 - (8) 1983(2) S.L.R. 786.

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of general application, regulating absorption in permanent departments, fixation of seniority, pay, etc., of the employees of the erstwhile Grain Shop Departments. The respondent-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representatives. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decisions of October 16, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

(19) In Ram Gopal's case (supra) the provisions of rules 7-A and 7-B of Public Service Commission (Procedure) Rules, 1970 (hereinafter referred to as the Rules) were under challenge on the ground that these were violative of Articles 14 and 16 of the Constitution of India. Their Lordships in para 19 of the judgment following *Siddhanti's case* (supra) did not permit the State to take up the plea that the petition be dismissed for non-joinder of necessary parties who were liable to be affected as a result of the declaration that the impugned provisions of Rules 7A and 7B of the Rules were *ultra vires* the Articles 14 and 16 of the Constitution of India.

(20) In *B. Gopalaiah's case* (supra) memorandum of the State Government directing that the teachers who were previously working in a privately managed school should be allowed to count for weightage only one year's continuous service rendered prior to the taking over of the schools instead of their entire service under the private management. The said memorandum was alleged to be discriminatory and violative of Articles 14 and 16 of the Constitution of India. When it was contended on behalf of the

Government that some persons who were not parties to the petition were likely to be affected if the memorandum was struck down, the plea was repelled by Chinnappa Reddy, J., as he then was with the observations, "This is not a case of discrimination of individual against individual. This is a case where a whole class of citizens have been discriminated against and the Court cannot refuse to give relief to them on the ground that the class of persons who will be benefited as a result of the discrimination are not before the Court. The person who complains of discrimination cannot be expected to search the country for all persons who are likely to be benefited by its discriminatory policy. Of course, if the discrimination is in favour of an individual against an individual different considerations might arise". It is the above observations which were approvingly quoted by their Lordships in *Ram Gopal Shukla's case* (supra).

(21) In *Reserve Bank of India's case* (supra) a scheme formulated by the Government was impugned on the ground of its being discriminatory. Delhi High Court approvingly quoted the aforesaid observations of Chinnappa Reddy J. from *B. Gopalaiiah's case* (supra) and took the same view.

(22) A Division Bench of the Gujarat High Court in *N. K. Dholakia's case* (supra) took the same view as enunciated in *Siddhanti's case* (supra) while considering a challenge to the principles of fixation of seniority and validity of rules in that regard when actual seniority list was not under challenge.

(23) In *A. Janardhan's case* (supra) amended rules which were given effect retrospectively prescribing examination for Assistant Engineers on the date on which the respondents were promoted, the State refused to consider the case of the appellants on the ground that they had not passed the said required examination and it was validity of the State Government's decision that came under challenge in the writ petition. The respondents had since been promoted on the basis of the impugned decision of the State Government were held to be not necessary parties to the writ proceedings following the view taken by their Lordships in *Siddhanti's case* (supra).

(24) In *Piare Lal's case* (supra), this Court following the ratio of *Siddhanti's case* (supra) had observed, "Declaratory judgment of the Court dealing with the legality of the statutes, rules and Governmental policies are binding not only on persons who are party

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thereto but on others also who may be incidentally affected by such a declaration. It is only a party which was a necessary party before the Court and had not been impleaded as such, that may feel free to legally challenge the binding nature of a given judgment of the Court if that judgment adversely affects its rights and interests."

(25) Perusal of the judgments aforementioned, relied upon on behalf of the private respondents in support of the submission that the appellants were not necessary parties to the Writ Petition Nos. 1775 and 6900 of 1975; that where a validity of a policy, rule or statutory provision is alone under challenge and no relief against an individual on fact relevant and peculiar to the petitioner and the given affected person is sought by the petitioner, then such persons as may be affected as a result of the declaration given by the Court regarding the validity of the given policy, rule and the statutory provision would not be necessary party to such writ petitions.

(26) The ratio of the aforesaid decisions is not attracted to the facts of the present case. In the present case the private respondents, some of whom were the petitioners in the two writ petitions 7124 and 6900 of 1975, had not only sought a declaration to the effect that the instructions issued by the Inspector-General of Police were illegal, but also sought the relief that the selection made on the basis of the said instructions be quashed and that they being senior to the persons selected were (apparently herein) along being entitled to be admitted to the Cadre Course in question in preference to them. The learned single Judge, who decided Civil Writ 7124 and 6900 of 1975, not only held the instructions to be void but also expressly quashed the selection of the appellants to the admission of the Cadre Course and directed the authorities to admit the private respondents herein to the Cadre Course, as they were considered senior to the appellants herein, who had been sided to undergo that course.

(27) Counsel for the appellants, on the other hand, has contended that the appellants were necessary party to the Civil Writs No. 7124 and 6900 of 1975 filed by some of the private respondents and that to the facts of the present kind, it is the ratio of the judgments namely *A. Periakaruppan v. State of T.N.* (9); *State v. Raffia*

Rahim (10); *Padam Raj Samarandra etc. v. State of Bihar and another* (11); *Jayant Kumar v. P. S. C. M.P.* (12); and *Chief Personnel Officer E. Rly. v. Pranab Kumar* (13); is attracted. All the aforementioned cases relate to the right of the petitioners therein to admission into medical colleges or other academic institutions on the basis of the interpretation of the rules pertaining to admission.

(28) In *Periakaruppan's case* (supra), their Lordships declined to set aside the selections already made as the selected candidates had not been made parties to the writ petition and their selection could not be set aside without giving them an opportunity to put forward their case. Their Lordships did not do so despite the fact that the petitioners had filed applications to permit them to have recourse to Order 1, Rule 8, C.P.C. for the representation of the persons interested in opposing these application but no order had been passed on those applications.

(29) In *Raffi Rahim's case* (supra), selection of candidates for admission to the Medical Colleges was impugned. The Advocate General raised a preliminary objection that the writ petition must fail for non-joinder of selected candidates. Their Lordships following *Periakaruppan's case* (supra) held that the writ petition in so far as it impugns the selection already made should fail for non-joinder of the selected candidates. Their Lordships held that *Siddhanti's case* (supra) had no application to the case in hand.

(30) In *Padmraj Samaradra's case* (supra), admission of candidates to the medical college was in question. The selected candidates were not made party to the writ petition. It was held that the petition was not maintainable in the absence of the parties who were going to be directly affected.

(31) In *Pranab Kumar's case* (supra) the petitioner has challenged selection of 13 persons selected by the Selection Board for appointment to the posts of Law Assistants and in the alternative had claimed for the inclusion of his name to the panel of selected persons. The selection of 13 persons was challenged on the ground that the Selection Board was not properly constituted. A Division

(10) A.I.R. 1978 Kerala 176 (F.B.).

(11) A.I.R. 1979 Patna 266 (F.B.).

(12) 1979(1) S.L.R. 316.

(13) 1978 Lah. I.C. 223.

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Bench of the Calcutta High Court observed, "Where the petitioner under Article 226 has prayed for cancellation or modification of the panel of thirteen persons selected by the Selection Board for appointment to the posts of Law Assistants by inclusion of his name in the panel, those thirteen persons already included in the panel are necessary parties to the petition and the petition is bad for non-joinder of parties. It may be that persons included in the panel have no right to be appointed, but cancellation of the panel or modification of the panel by adding other names affects their interest in respect of selection at the appropriate time. These persons should have an opportunity to meet the challenge to their selection in the panel. From this point of view they are vitally interested in upholding their selection in the panel. "*Siddhanti's case* (supra) was distinguished and the reference was made to another Supreme Court judgment in *Udit Narain v. Additional Member, Board of Revenue, Bihar* (14), in which distinction between a necessary party and proper party had been enunciated.

(32) In *Jayant Kumar's case* (supra), a Division Bench judgment of the Madhya Pradesh High Court, the petitioner was not called for interview by the Public Service Commission. He challenged on the writ side the legality of the criteria laid down by the Commission for calling the candidates for interview and for a direction that he should be called for interview besides seeking quashing of the process of calling and interviewing the candidates by the Commission. The selected candidates were not joined as party to the writ petition. The Bench sustained the objection of the Advocate-General that the petition was not maintainable in view of the non-joinder of the selected candidates who were the necessary parties with the following observations :—

"Only four of the selected candidates have appeared before us as interveners. If the petitioner is given the relief prayed for in the petition that the entire process of selection was invalid and void, the selected candidates are bound to be affected. They are, therefore, necessary parties. The petitioner submitted that even after selection the selected candidates do not get a right as the Government has a discretion not to appoint them. It is true that merely by the selection made by the Public Service Commission a candidate cannot claim any right to the post for which

he is selected. The Commission has only an advisory function to perform. However, when the petitioner challenges the process of selection and prays that the entire selection should be quashed, it is obvious that if the petition is allowed the selected candidates will be adversely affected as the advantage gained by them in the selection over the petitioner and other candidates who were rejected by the Commission would be wiped out. In our opinion, therefore, their joinder as parties in the petition was necessary before the petitioner could be granted any relief. The view taken by us is supported by a decision of the Calcutta High Court in *Chief Personnel Officer E. Rly. v. Pranab Kumar* (10). In that case, it was held that when the petitioner prays for cancellation of a panel selected by the Selection Board, the persons selected are necessary parties and in their absence the petition is bad for non-joinder."

We hold that there is merit in the contention advanced on behalf of the learned counsel for the appellants.

(33) There is also merit in additional contention advanced on behalf of the appellants that even if for the sake of arguments it is held that ratio of Siddanti's case (supra) and the case which have taken that view following that decision is attracted even to the case of kind in hand, then in the light of the latter decision of the supreme Court of a larger Bench reported as *Parbodh Verma v. State of U.P.* (15), the High Court shall have to follow the ratio of the decision of the larger Bench. In *Parbodh Verma's* case (supra) it was the constitutional validity of the two Uttar Pradesh Ordinances namely the U.P. High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 and the Uttar Pradesh High Schools and Intermediate College (Reserve Pool Teachers) Ordinance, 1978, came up for consideration. The two Ordinances had been struck down by a Division Bench of the Allahabad High Court on the ground that its provisions were violative of Articles 14 and 16(1) of the Constitution of India. Second question that arose before their Lordships of the Supreme Court was as to whether the termination of the services of the appellants and petitioners as secondary school teachers and intermediate college teachers relying upon the said Allahabad High Court judgment was valid or not,

(15) A.I.R. 1985 S.C. 167.

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In para 28 of the judgment their Lordships before going into the constitutional question raised had the following observations to make :—

“The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh’s case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh’s petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties—not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or atleast by some of them before it as respondents in a representative capacity if their number is too large and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh’s writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

(34) In view of the aforesaid observations of the larger Bench in *Parbodh Verma’s case* (supra), which this Court has no option but to follow in preference to the smaller Bench decisions of the Supreme Court, it has to be held that the appellants in L.P.A. Nos. 291 and 368 of 1984 before us were necessary parties to the Civil Writ Petition Nos. 7124 and 6900 of 1975 and, therefore, the observations made in those judgments would not, in any manner, affect adversely the appellants with the result that the appellants who had undergone the cadre course of the lower school course in the year 1976 were entitled to be considered for being brought

on the 'C' list and to be promoted as Head Constable from the date they had been so promoted as on that date the private respondents were yet undergoing the cadre course/lower school course and they, therefore, in terms of rule were not even eligible to be considered for promotion to the post of Head Constable as the successful completion of the lower school course was *sine qua non* for promotion to the next higher post of Head Constable. Once the Constables who were eligible for further promotion and stood promoted to the next higher post, the Constables who were their senior as Constables having also passed the lower school course after their so called junior had been promoted to the post of Head Constable, cannot be legally permitted to flaunt their seniority as Constables and seek promotion as Head Constable in point of time prior to those who although were junior to such constables but were alone eligible to be promoted on the date they were so promoted to the post of Head Constables.

(35) For the reasons aforementioned, we allow all the four appeals and set aside the judgment of the learned single Judge and also dismiss the petitions filed by the private respondents herein in L.P.A. No. 291 of 1984 and L.P.A. No. 368 of 1984 and respondents Nos. 1 to 21 in L.P.A. No. 370 of 1984 and 1 to 42 in L.P.A. No. 371 of 1984. No costs.

N. K. S.

FULL BENCH

Before P. C. Jain, C.J., S. P. Goyal & I. S. Tiwana, JJ.

Bhupinder Singh and others,—Petitioners.

versus

The State of Punjab and others,—Respondents.

Civil Writ Petition No. 1490 of 1984.

October 25, 1985.

Punjab Cooperative Societies Act (XXV of 1961)—Section 84-A—Punjab Cooperative Societies Rules, 1963—Rules 80-B and 80-C Punjab State Supplies and Marketing Cooperative Services (Common Cadre) Rules, 1967—Rules, 1.4, 1.6 and 2.10—Board of Directors of Markfed resolving to abolish superfluous posts—Services of the employees holding such posts—Whether could be terminated only