1st Class, Mansa (Exercising the powers of District Judge under the Hindu Marriage Act) and direct him to re-decide the matter in accordance with law. The parties through their counsel are directed to appear before the trial Court on October 28, 1977. No costs. The records should be despatched to the trial Court posthaste.

H. S. B.

FULL BENCH

MISCELLANEOUS CIVIL

Before A. D. Koshal, S. S. Sandhawalia, D. S. Tewatia, Bhopinder Singh Dhillon and Surinder Singh, JJ.

DALJIT SINGH MINHAS ETC.,—*Petitioners.*

versus

THE STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 1553 *of* 1977.

24th October, 1977.

Constitution of India 1950—*Article* 16—*Punjab Educational Service Class III School Cadre Rules* 1955—*Rules* 2 (*e*) *and* 7 (*i*)—*Employment Exchanges (Compulsory Notification of Vacancies) Act* 1959—*Sections* 2 (d) *and* 10—*Direct recruitment to a post—Mode and manner of inviting applications therefor—Advertisement in the Press—Whether a requirement of Article* 16 *or the Rules—Normal channels of selection taking time and* ad hoc *employees appointed through Regional Employment Exchanges—Services of such employees having one year of service regularised—Candidates selected by Departmental Recruitment Committee not appointed—Such regularisation—Whether hit by Article* 16—*Selection by the Committee—Whether confers a right to appointment—Employment Exchanges—Whether provide a publicised medium for purposes of recruitment.*

Held, that it is not the requirement of the Constitution of India 1950 under Article 16 that for direct recruitment to an office under the State, there must be an advertisement in the public press so as to reach every conceivable candidate in the country. Indeed such a requirement is both doctrinaire and impossible of actual implementation. Nor is there anything in the Punjab Educational Service Class III School Cadre Rules 1955 which may warrant a similar requirement. This, however, is not to be understood that appointments to public office are to be made in a cloistered manner. What is clearly implied is that the mode and manner of giving adequate publicity for the posts to be filled either to the public at large or to the class or source to which recruitment may be confined, has

necessarily to be left to the judicious discretion of the authority concerned. Probably, in the majority of the cases public advertisement may still be the best mode of reaching out to the candidates concerned. However that by itself would be a far cry from holding that it should be made a constitutional requirement under Article 16 and thus invalidating all appointments in the absence of press advertisements. Whether in a particular case, there has been a hostile discrimination or arbitrary exclusion of the citizen for the purposes of public employment under the State, resulting in violation of Article 16, has necessarily to be decided on its peculiar facts.

(Paras 11 and 12)

Held, that the State was faced with the gigantic problem of recruiting thousands of teachers for the vast net work of schools in the State, and for wholly unavoidable reasons the normal channel of selection through the Subordinate Services Selection Board and the Departmental Recruitment Committee took time in finalising the selection. Obviously, in this period the educational services could not remain unmanned and the State very fairly resorted to recruitment through Regional Employment Exchanges in each jurisdiction for the appointment of *ad hoc* employees. Some of these employees had put in a number of years' service and acquired valuable experience and discharged their duties in an amply satisfactory manner. In a particular situation experience may far out weigh many other considerations and experience indeed would be one facet of merit which the State is entitled to take into consideration. Therefore, the classification by the State of those *ad hoc* employees who had put in more than one year's service on a prescribed date in a satisfactory manner is not only reasonable but indeed meritorious. The State was equally entitled to take into consideration that the ouster of these experienced teachers would not only be against the administrative interest, but would also entail considerable hardship to these persons by again unsettling them. It is, thus plain that in the very peculiar circumstances arising, the *ad hoc* employees having an experience of more than one year of satisfactory service are a well defined class to which resort for the purpose of recruitment to the posts is patently legitimate. This classification bears the closest scrutiny both on the ground of its reasonableness as also on the point of its nexus to the object of greater efficiency. Therefore the action of the State in resorting to the aforesaid class as a distinct source of recruitment cannot even remotely be hit by Article 16..

(Paras 16 and 17)

Held, that the mere factum of selection by the Departmental Recruitment Committee does not give any inalienable right to the person so selected for appointment to the post.

(Para 19)

Held, that statutory recognition has been extended to the Employment Exchanges by the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and further that these are State regulated bodies governed in the fullest details by consolidated and detailed government instructions contained in the National Employment Service Manual. The doors of these Employment Exchanges are wide open to all citizens both employed and unemployed, who seek employment without any monetary charge whatsoever. An elaborate and comprehensive procedure for first classifying and documenting all the applications of the employment seekers and their subsequent forwarding and consideration by the employers has been spelled out. Apart from the fact that the Employment Exchanges are bound to send the names of the suitable candidates against the vacancies referred to them, it is plain that in view of para 9.13 and 9.15 of the Manual there is no bar at all to the employers having access to all the applications on the live register of an Employment Exchange. The vast net work of Employment Exchanges developed for over a period of 30 years by the Ministry of Labour and Employment over the whole country is a well publicised medium so as to form a reasonable classification for the purposes of a source of recruitment. Employment Exchanges provide an open, well publicised and a statutory market which fairly serves the interests of all those who are seeking employment as also those who can provide the same.

(Para 28)

Case referred by Hon'ble Mr. Justice O. Chinnappa Reddy, and Hon'ble Mr. Justice Gurnam Singh to a Full Bench on 3rd August, 1977 *for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice A. D. Koshal, Hon'ble Mr. Justice S. S. Sandhawalia, Hon'ble Mr. Justice D. S. Tewatia, Hon'ble Mr. Justice Bhopinder Singh Dhillon and Hon'ble Mr. Justice Surinder Singh finally decided the case on merits on 24th October,* 1977.

Petition under Articles 226/227 *of the Constitution of India praying that :—*

(*i*) *a writ in the nature of certiorari quashing the Instructions Annexures P-3 and P-5, so far as it relates to the Education Department, be issued ;*

(*ii*) *a writ in the nature of mandamus directing the respondents to appoint the petitioners as they have been properly selected by the Departmental Recruitment Committee, be issued ;*

(*iii*) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued ;*

(*iv*) *the record of the case be ordered to be sent for ;*

(*v*) *the cost of the petition be awarded to the petitioners.*

It is further prayed that during the pendency of the writ petition the operation of the impugned instructions so far as it relate to the Education Department, be stayed.

It is further prayed that the condition of issuing notices to the respondents before-hand be dispensed with.

Kuldip Singh, Advocate, *for the Petitioners.*

A. S. Sarhadi, Advocate-General, Punjab.

I. S. Tiwana, D.A.G. Punjab and N. S. Bhatia, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, J.

(1) The constitutional validity of the Punjab Government Notification (annexure P. 3 dated the 3rd May, 1977) authorising the regularisation of the services of teachers already employed on an *ad hoc* basis if they satisfy the conditions specified therein—is the subject-matter of challenge in this set of writ petitions.

(2) The facts are not in dispute and may be examined with reference to those in Civil Writ No. 1553 of 1977—*Daljit Singh* v. *The State of Punjab*. It appears that in the year 1974, the respondent-State of Punjab was faced with the problem of recruiting thousands of teachers in its Department of Education. Included therein were 1797 posts of Social Study Masters/Mistresses, recruitment whereof was governed by the Punjab Education Service Class III School Cadre Rules, 1955. The respondent-State decided to fill these posts by way of direct recruitment under the rules aforesaid and to effectuate that purpose, a Departmental Recruitment Committee consisting of one Chairman and two members was constituted. The said Committee issued an advertisement in the daily Tribune dated the 16th of July, 1974, (annexure P. 1) inviting applications from eligible persons to the said post and the last date for the receipt of these applications was 8th August, 1974. This date, however, was later extended up to December, 1974. The 443 petitioners applied for appointment along with thousands of other candidates who were all interviewed by the said Committee and the process was not finalised

till the end of the year 1976. The petitioners were selected by the Recruitment Committee and their names were recommended to the Director of Public Instruction, Punjab for appointment as Social Study Masters in the month of January, 1977. Identical letters in the form of annexure P. 2 were issued to them requesting them to correspond with the concerned officer for necessary action for the purposes of their appointments. However, no appointment letters were issued in the petitioners favour and before this could be done, the impugned notification, annexure P. 3, dated the 3rd May, 1977, was issued by the respondent State. Thereby all the posts (including those against which the petitioners were to be appointed which had come to be occupied by adhoc employees were excluded from the purview of both the Subordinate Services Selection Board and the Departmental Recruitment Committee as the case may be. Instead it was directed that the services of all those adhoc employees holding these posts who satisfied the conditions specified in the said notification were to be regularised after screening each case by the appointing authority, namely, the Director of Public Instruction. It was further directed that the process of regularisation of these cases should be completed within a maximum period of three months.

(3) As is evident the process of selection through the Departmental Recruitment Committee a gigantic task had taken nearly three years. During this period the respondent-State invited applications through different Employment Exchanges for appointment to the posts of Social Study Masters on an adhoc basis to cope with the work. It is the petitioners' case that these adhoc appointees were recruited on the terms that their services could be terminated as soon as some of duly selected appointees were available. However, as no appointments were made through direct selection, some of these adhoc appointees continued for a period as long as three years in service. It is, however, the petitioners' case that some of these adhoc employees had also applied to the Departmental Recruitment Committee (in the writ petition the names of only 14 persons are specified), who according to the petitioners were not selected by the Committee after consideration of their cases.

(4) It is the case that the denial of appointment to the petitioners and the notification, annexure P. 3, is violative of Article 16 of the Constitution. Further that the notification aforesaid is contrary to the statutory rules and is thus liable to be quashed on that ground as well.

(5) The stand of the respondent-State, apart from the preliminary objections raised (to which reference is unnecessary) may briefly be noticed. It is pointed out that the rationale for the regularisation of the services of *ad hoc* employees is that during the period of three years, they had acquired necessary experience and their ouster after a considerable period of service would entail hardship to them as a whole and further accentuate the problem of unemployment. Whilst weighing the comparative position of persons already in service on an *ad hoc* basis for a long time and those yet to be recruited, the element of hardship in the case of the former is more conspicuous for the reason that they will get unsettled by their ouster. Nevertheless it is the claim that the respondent-State has attempted to draw a balance between the interest of the individuals and the larger interest of the administration. It has therefore, been laid down that all those candidates selected by the Subordinate Services Selection Board or the Departmental Recruitment Committee who do not get adjusted in their capacity as ad hoc employees in the manner provided shall be adjusted against the remaining vacancies available after the 31st of March, 1976, including those which were lying vacant prior to this date. It is then highlighted that due to the peculiar facts and the tenure of *ad hoc* employees and the experience gained by them they have been treated as a distinct class for the source of recruitment. It is emphasised that even at the stage of original appointment of such *ad hoc* employees, the channel of Employment Exchanges which is open to all citizens was utilised. It has then been emphasised that the respondent-State is perfectly within the law to exclude any or all the posts from the purview of either the Subordinate Services Selection Board or from that of the Departmental Recruitment Committee.

(6) Now it is the common case that recruitment to the class of posts aforesaid is governed by the Punjab Educational Service, Class III School Cadre Rules 1955 (hereinafter called the Rules), the argument necessarily has revolved on the relevant provisions thereof which may first be set down for facility of reference:—

"1. *Short title* (i) These rules may be called the Punjab Educational Service, Class III, School Cadre Rules, 1955;

(ii) they shall come into force at once.

2. *Definition*: In these rules, unless there is anything repugnant in the subject or context—

"(e) *Direct Appointment* means an appointment made otherwise than by promotion within the service or by transfer of an official, serving in another department of any State in India or the Government of India.

* * * * * *

7. *Method of recruitment*

(i) Posts in the service shall be filled;

(a) by direct appointment or

(b) by transfer of an official from other services or posts of Government in the Education Department of any Government in India, or

(c) by promotion from lower grades in the service".

(ii) When a vacancy occurs or is likely to occur in the service the appointing authority specified in rule 3, shall determine in what manner such vacancy will be filled

(iii) Appointment to any post by promotion of officials already in the service or by transfer from other services within the Education Department of Government or other departments of any State or Central Government shall be made strictly by selection based on consideration such as qualifications and/or consistent good record for a number of years and no official shall have any claim to such appointment as of right.

Now, the spearhead of the learned counsel for the petitioners attack is sought to be rested on the defining clause for direct appointment in Rule 2(e) and the method of recruitment prescribed by Rule 7(i)(a). It was submitted that in the present case, the regularisation of the *ad hoc* employees was wrongly sought to be made as direct appointments provided for in the aforesaid provisions. The core of the counsel's arguments is that direct recruitment first necessarily implies an advertisement in the press of all

the posts in order to reach all the citizens who may be eligible therefor. Thereafter, it equally requires consideration and assessment of the merits of all the applicants who may choose to come forward in pursuance of such advertisement in the press. Indeed, Mr. Kuldip Singh went to the logical length of raising the abstract argument that all cases of direct appointments to civil posts wihout these being advertised in the press in order to reach all the eligible citizens would be discriminatory and hit by Article 16 of the Constitution. Primary reliance of the learned counsel was on *B. N. Nagarajan and others, etc.* v. *State of Mysore and others,* (1) and *R. N. Nanjundappa* v. *T. Thimmah and another* (2).

(7) It is plain that an argument of some significance has been raised, which merits consideration both on principle and on precedent. Now, leaving the mass of case law aside for a moment it must be borne in mind that by now it is well settled that Article 16 is indeed one facet of the general doctrine of equality enshrined in Article 14 of the Constitution. It has been authoritatively held that Article 16 is yet another aspect of the concept of equality set in the context of public employment. In construing both these Articles their lordships have repeatedly laid down that an overly technical or pedantic approach must be avoided. As under Article 14, so under this Article also, a reasonable classification is not forbidden. Article 16 does not exclude a selective test, nor does it preclude the prescription of qualifications for office not merely of mental excellence, but if need be of physical fitness, sense of discipline, moral integrity and loyalty to the State as well. In short, clause (1) of Article 16 cannot and does not bar any reasonable classification of employees as a whole or reasonable tests for their selection. If that be so, the learned Advocate-General of Punjab is on firm ground in submitting that the respondent-State cannot be debarred from choosing a particular source of a well-defined class for the purposes of recruitment to its services.

(8) The language of Article 16(1) itself and the large gamut of the service law has by now well established that direct recruitment from the general public without exception is not a necessary postulate thereunder. There is no manner of doubt that the State either

(1) AIR 1966 S.C. 1942.

(2) 1972 S.L.R. 94.

by framing rules to this effect and in their absence equally by executive instructions can exclude direct appointment to a post altogether and confine it entirely to promotion from its existing employees. Equally, it is possible to choose other sources of recruitment. Rather than digress in this respect in general, it is more instructive to confine one-self to the particular rules under consideration herein. Rule 7(i)(b) in terms provides for recruitment by transfer of an official from the education service of any other State in India or the Government of India itself. Obviously, no challenge was and could be posed to such a source of recruitment either. Now, if it is possible to exclude direct recruitment altogether by confining such recruitment to either promotees or transferees or to the class of other Government employees only then it would necessarily follow that it would be equally possible for the State to restrict its field of choice to another source of recruitment which can stand the test of reasonable classification. Therefore, direct recruitment also may be confined to a well defined class of the public and not necessarily imply or require the whole of the citizenry of the country at large.

(9) Viewed from another aspect, it may well be said that the requirements of Article 16 are not of a positive nature, which may place on the State the duty to advertise every civil post in order to reach every eligible person within the country and thereafter to consider every application with regard thereto on its merits before manning any office under the State. To put it in other words the requirements are of a negative nature intended to hit any legislation, rule, instruction or even individual action of the State, which amounts to hostile discrimination in the matters of public employment or amounts to an arbitrary exclusion of the citizen from seeking the same. Therefore, if the employer-State can clearly indicate a reasonable classification for the source to which it has confined itself to select persons to man public offices, then no fault can be found therewith on the basis of any doctrinaire approach to Article 16. If the respondent-State can establish that the mode and method of recruitment to public office is by and large just and fair and not arbitrary and capricious, then the field of judicial scrutiny thereof cannot be extended on the ground of some hyper-technical infraction of the supposed doctrine of absolute and mathematical equality for the opportunities of employment of each citizen.

(10) Adverting now to the particular context of the definition in the rules, it appears to me that direct appointment thereunder does

not either visualise or necessarily require an advertisement in the public press to reach every eligible person. Indeed, herein direct appointment has been defined negatively under Rule 2(e). Reference to Rule 7(i) makes it plain that the sources of recruitment are three-fold, namely—by direct appointment, by promotion from a lower-grade in the service and by transfer of an official from the education department of any Government in India. Now a reading of Rule 2(e) and Rule 7(i) together, makes it manifest that the definition of 'direct appointment' has been deliberately made in the negative form by prescribing that any appointment not by way of promotion or by way of transfer from the category of Government service is to be deemed direct appointment. No positive requirements for such direct appointments are either prescribed or visualised. Therefore, any resort to sources other than that of promotees and transferred Government officials is for the purposes of rules, deemed and classified as direct appointment. Therefore, on the particular language of Rule 2(e), as also the general import of the rules, there seems to be nothing to warrant that direct appointments here necessarily require a resort to the public at large and, therefore, an advertisement in the press for resorting to this source of recruitment either.

(11) I would, therefore, hold on principle that it is not the requirement of the Constitution under Article 16 that for direct recruitment to an office under the State, there must be an advertisement in the public press, so as to reach every conceivable candidate within the country. Indeed, such a requirement appears to me as both doctrinaire and also impossible of actual implementation. Nor do I find anything in the particular rules, which are under consideration which may warrant a similar requirement.

(12) Having held as above, one must sound a note of caution that it is not to be understood that appointments to public office are to be made in a cloistered manner. What is clearly inplied is this that the mode and manner of giving adequate publicity for the posts to be filled either to the public at large or to the class or source to which recruitment may be confined, has necessarily to be left to the judicious discretion of the authority concerned. Probably, in the majority of the cases public advertisement may still be the best mode of reaching out to the candidates concerned. However, that by itself would be a far-cry from holding that it should be made a constitutional requirement under Article 16, and thus invalidating all appointments in the absence of press advertisements. Whether in a particular case,

there has been a hostile discrimination or arbitrary exclusion of the citizen for the purposes of public employment under the State, resulting in violation of Article 16, has necessarily to be decided on its peculiar facts.

(13) Adverting inevitably now to the authorities cited at the bar one may first notice the two relied on by the learned counsel for the petitioners. In *B. N. Nagarajan's case* (supra) any such point was not even remotely before their Lordships. Therein Mr. M. K. Nambiar for the respondents raised an argument that Articles 15 and 16 would be breached if the executive is held to have the power to make appointments and lay down conditions of service without making rules under Article 309. In repelling the said argument, Sikri J. made a passing observation that no such result would follow if the Government advertised the appointments and the conditions of service. This isolated observation is hardly of any aid to the learned counsel for the petitioners. Similarly, in *Nanjundappa's* case (supra) the primary point before their lordships was whether a rule can be made for the appointment of one man alone and whether appointment can be regularised by such a specific provision notwithstanding the existing rules to the contrary. Therein some general observations were made regarding the material and indicia necessary for inferring a direct recruitment. In my view these observations do not in any way advance the case on behalf of the petitioners. Apart from this, mere reliance on an isolated observation in a decision is well covered by the rule in *Quinn* v. *Leathem*, (3) that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. In approving this principle, their lordships in *State of Orissa* v. *Sudhansu Sekhar Misra and others,* (4) have further observed that it is not a profitable task to extract a sentence here and there from a judgement and to build upon it. In a period now of nearly three decades in which Article 16 has been repeatedly interpreted, their lordships of the Supreme Court have not so far laid down that an advertisement in the public press throughout the country is a *sine qua non* for direct recruitment and that unless it is so done, this article would stand infracted.

(3) 1901 Appeal cases 495.

(4) A.I.R. 1968 S.C. 647.

(14) On the contrary there is a plethora of authority for the opposite view to which reference presently follows. Pride of place must obviously be accorded to the Full Bench judgement of this Court in *Dr. Kartar Singh Rai* v. *The State of Punjab*, (5), which bears directly on the point. Therein also primary reliance was placed as here on paragraph 7 of the report in *Nagarajan's* case (supra) and Capoor, J. in one of the majority judgments rejected any such inference from the observations therein. Sodhi, J. in the concurring majority view was even more forthright on the point in the following terms:—

"It is not seriously contended before us that their Lordships have in *Nagarajan's case* laid down that advertisement for any selection post, where departmental promotion is to be made in the exercise of the executive power of the State is necessary, and if not made, it would amount to denial of equality guaranteed by Articles 15 and 16 of the Constitution. No such contention can possibly be advanced with reasonableness as inviting of applications by advertisement is only one of the modes of recruitment which would exclude arbitrariness. There may be appointment even without an advertisement and still no arbitrariness is brought in. It will depend on the facts and circumstances of each case as to whether a particular appointment has been so made as to discriminate between two persons similarly situated so that it can be said that a differential treatment has been accorded to one at the cost of the other.

It is a mistaken approach to think that in case of every appointment or recruitment to a service or promotion, the State should first invite applications. ...."

The aforesaid view was approved and followed by a Division Bench of the Allahabad High Court in *State of Uttar Pradesh* v. *Bhola Nath Srivastav Jauhar and ors.*, (6) with the following observation :—

"Articles 14 and 16(1) do not require any positive act on the part of the State to give equal opportunity to all citizens;

(5) 1969 S.L.R. 79.
(6) 1972 S.L.R. 447.

they only prohibit the State from doing anything, whether by making a rule or by executive action, which would deny equal opportunity to all citizens. It is not necessary that the State must, in every case of public employment, issue an advertisement or notice, inviting applications for the office."

Reliance in the aforesaid judgment was also placed on similar observations made by a Division Bench in *Dr. S. T. Venkataiah Thimmaiah and another* v. *State of Mysore and others,* (7). A Division Bench in *Parmatma Sharan and another* v. *Hon'ble the Chief Justice of Rajasthan High Court and others,* (8) has then rejected the proposition canvassed on behalf of the petitioners herewith the following observations :—

"If a contrary view of law is adopted, it would mean that in every case of promotion there must be notice to all the citizens or at least to the persons who are eligible for appointment or promotion that their cases shall be considered. Not only this but they must be given every full opportunity for placing their cases before the appointing authority. In the case of a direct appointment, a citizen may say, once it is conceded that an opportunity is to be given, that the opportunity afforded to him was not sufficient. Such is not in our considered opinion the connotation of equal opportunity given in Art. 16. As we have already pointed out the emphasis is that as between A and B there should be no discrimination in the matter of employment ...."

The larger perspective for construing Article 16 has then been illuminatingly and authoritatively pronounced upon by Dua, J., speaking for the Supreme Court in *Ganga Ram and others* v. *Union of India and others* (9), as under :—

"In applying the wide language of Arts. 14 and 16 to concrete cases a doctrinaire approach should be avoided and the

(7) A.I.R. 1969 Mysore 186.
(8) A.I.R. 1964 Rajasthan 13.
(9) 1970 S.L.R. 755.

matter considered in a practical way, of course, without whittling down the equality clauses. The classification, in order to be outside the vice of inequality, must, however, be founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied then the classification cannot be hit by the vice of inequality. ......"

In a recent Supreme Court judgment reported as *The State of Jammu and Kashmir* v. *Triloki Nath Khosa and others* (10) their Lordships have again reiterated the aforesaid view in the following picturesque words by Krishna Iyer, J. :—

"In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to procrustean cruelty or sanctions indolent in efficiency. Necessarily, therefore, an imaginative and constructive *modus vivendi* between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of 'classification' and 'differentia', with the by products of equality among equals and dissimilar things having to be treated differently. The social meaning of Arts. 14 to 16 is neither dull uniformity nor specious "talentism"......"

In the main judgment Chandrachud, J. outlined the limits of judicial interference in the following words :—

"Judicial scrutiny can, therefore, extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an enquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object."

(10) 1974 (1) S.L.R. 536.

The limitation and the negative aspect of Article 16 have then been high-lighted by the Bench in *Parmatma Sharan's case (supra)* in the following words :—

> "The emphasis is on equal eligibility and absence of discrimination. If there is a bar by way of a notification, rule, regulation or law issued by any authority infringing this right, it will be invalid. What Art. 16 contemplates is that a citizen should not be denied the equality of opportunity but it does not mean that positively he should be afforded certain facilities or that particular procedure must necessarily be followed in making an appointment. If there is any denial of an opportunity, it may amount to an infringment of Article 16 but this article does not cast a duty on the appointing authority that the citizens should be afforded particular facilities."

(15) It is thus plain that both on the larger rule of construction of Article 16 and on the specific point of the alleged necessity of public advertisement in the press, the weight of authority seems to be entirely against the proposition canvassed on behalf of the petitioners.

(16) Once the challenge on the ground of absence of advertisement in the present case is repelled, as it must be both on principle and authority, then it is plain that the stand of the respondent-State is impeccable. From the pleadings it is obvious that the respondent-State was faced with the gigantic problem of recruiting thousands of teachers for the vast net work of schools in the State. For wholly unavoidable reasons the normal channels of selection through the Subordinate Services Selection Board and on the petitioners' own showing the process of selection through the Departmental Recruitment Committee took nearly three years in finalising the selection. Obviously, in this period the educational services could not remain unmanned and the respondent-State very fairly resorted to recruitment through the Regional Employment Exchanges in each jurisdiction for the appointment of *ad hoc* employees. It appears that some of them had put in as many as three years of service and acquired valuable experience and discharge their duties in an amply satisfactory manner. The learned Advocate-General seems to be on firm ground in contending that in a particular situation experience may

far out weigh many other considerations and experience indeed would be one facet of merit which the State was entitled to take into consideration. Therefore, the classification by the State of those *ad hoc* employees who had put in more than one year's service on a prescribed date in a satisfactory manner was not only reasonable but indeed meritorious. The respondent-State was equally entitled to take into consideration that the ouster of these experienced teachers would not only be against the administrative interest, but would also entail considerable hardship to these persons by again unsettling them in a country overridden with unemployment. The respondent-State was, therefore, compelled to weigh the comparative positions of persons already in service on an *ad hoc* basis, who had rendered satisfactory service over a period extending 2 to 3 years as against those who were yet to be recruited for the first time. In such a situation a balance was drawn between both the administrative and the individual interest. It is the stand of the respondent-State that those amongst the petitioners who do not get adjusted in their capacity as *ad hoc* employees shall be adjusted against the vacancies available after 31st March, 1976, including those which were lying vacant prior to this date.

(17) It is plain from the above that in the very peculiar circumstances arising here the *ad hoc* employees having an experience of more than one year of satisfactory service are a well-defined class to which resort for the purposes of recruitment to the posts is patently legitimate. This classfication can well bear the closest scrutiny both on the ground of its reasonableness as also on the point of its nexus to the object of greater efficiency. Therefore, the action of the respondent-State in resorting to the aforesaid class as a distinct source of recruitment cannot even remotely be hit by Article 16.

(18) Repelled on his primary challenge, the learned counsel for the petitioners then fell back on an ancillary submission that the selection of the petitioners having been made by the Departmental Selection Committee and the merit-list duly prepared having been forwarded to the respondent-State, the latter was bound by the same and could not travel out therefrom for the purposes of appointments.

(19) I am unable to appreciate or detect any substance in the aforesaid contention. In fact it implies that the petitioners having

been merely selected by the Departmental Recruitment Committee have now acquired an inalienable right to claim appointment in the service of the respondent-State. It is worth re-calling that originally the selection to some of the posts in the Education Department was within the purview of the Subordinate Services Selection Board. This was apparently done away by a decision of the Government and is not in dispute that on the 12th of November, 1974, the Government by a notification took away all the educational Service posts out of the purview of Subordinate Services Selection Board. What the Government could do by its decision on a notification, it could undo the same by either of these methods. By the impugned notification, Annexure P/3, the President of India has in exercise of the powers vested in him excluded all those vacancies or posts occupied by *ad hoc* employees from the purview of both the Subordinate Services Selection Board and the Departmental Recruitment Committee. No possible challenge was and could be posed to this exclusion of these posts from their purview. That being so, I am unable to say how the mere factum of selection by such a Committee would give any inalienable right to the petitioners for appointment to the posts and in particular when the said posts have been even taken out of the purview of such Committee. No cogent argument on principle was advanced on behalf of the petitioners for what appears to be an obviously tall and a novel proposition. No authority on the point could be cited and learned counsel's reference to *C. Channabasavaih and others* v. *State of Mysore and others,* (11) appears to be misconceived because it is entirely wide of the mark. On the contrary *The State of Haryana* v. *Subash Chander Marwaha and others,* (12) clearly lays down that neither the existence of vacancies nor the fact of petitioners' names existing on the select-list gives any legal right to a candidate to secure appointment to the post. The same principle is clearly deducible from *Mani Subrat Jain etc.,* v. *State of Haryana and others,* (13). It, therefore, follows that the ancillary contention of Mr. Kuldip Singh must necessarily be rejected.

(20) The learned counsel for the petitioners then virtually clutched at a straw by contending that the impugned notification,

(11) A.I.R. 1965 S.C. 1293.
(12) A.I.R. 1973 S.C. 2216.
(13) A.I.R. 1977 S.C. 276.

Annexure P. 3, was violative of the rules. This submission was sought to be rested on rule 3, which provides that all appointments in the service shall be made by the Director of Public Instruction, Punjab, and further lays down some exceptions thereto. Counsel contended that by virtue of this provision, the power of appointment vested only in the Director of Public Instruction but by the impugned notification, the State Government has exercised power of appointing the *ad hoc* employees. Reliance was sought to be placed on observations in *The Purtabpur Company Ltd.* v. *Cane Commissioner of Bihar and others*, (14).

(21) It is plain that the judgement, aforesaid, relied upon can come to play only if the factual basis of the contentions that notification, Exhibit P. 3, appoints individual *ad hoc* teachers to the posts can first be established. In my view that has not even remotely been done. It is plain that the impugned notification is merely a policy decision which the State Government is perfectly entitled to take. As already noticed, it merely prescribes the source of recruitment for some of the vacancies by limiting it to the well-defined class of the existing *ad-hoc* employees who satisfy the requisite conditions therein. By the said notification, the actual appointments of individual candidates have in accordance with the rules been left in the hands of the Director of Public Instruction. This indeed is plain from the language of the notification itself. The relevant part thereof bears quotation in extenso :—

> "The services of *ad hoc* employees would be regularised after screening each case by the appointing authority. An officer of the concerned administrative department by the administrative Secretary concerned may as be associated for the purpose of screening such cases. The process of finalisation of these cases shall be completed by the departments within a maximum period of three months."

It is obvious from the above that even the screening and selection of individual cases of *ad hoc* employees, who satisfy the requisite conditions has been left in the hands of the appointing authority which obviously is the Director of Public Instructions under the rules. It follows that powers of screening, selection and the ultimate appointments are vested in the statutory appointing authority and, therefore, no question of any violation of rule 3 at all arises.

(14) A.I.R. 1970 S.C. 1896.

Therefore, the attack on the impugned notification on the basis of the alleged in fraction of rule 3 must necessarily be repelled.

(22) Now, a significant thing which calls for pointed notice in these petitioners is the fact that no-where any challenge has been laid to the validity of the original appointments of persons who were recruited as *ad hoc* teachers during the long period for which the selection through ordinary channels continued to hang fire. In the writ petitions, there are no pleadings whatsoever either with regard to the facts or equally with regard to any ground on which the original appointments of *ad hoc* teachers could be assailed. It equally deserves high-lighting that not a single *ad hoc* teacher has been even arrayed as the respondent in these writ petitions and only the official respondents have been made parties thereto, barring one Bhag Singh in Civil Writ No. 1460 of 1977, who also does not fall in the category of *ad hoc* teachers. In the total absence of any pleading on the point, the original appointments of *ad hoc* teachers in strictness cannot be the subject-matter of challenge and, therefore, the scope of the petitioners' attack is necessarily reduced to the limited ground whether such *ad hoc* employees can now reasonably be classified for the purpose of the regularization of their services and consequently being directly appointed to the posts within the cadre. For the reasons already recorded, there is no manner of doubt that if their original appointments as *ad hoc* employees cannot be put in issue, then after more than 1 to 3 years' satisfactory service as teachers, they can clearly form a well-defined class to which the State may reasonably resort to for the purposes of direct recruitment. That being so, in strictness, no other point survives for determination in these writ petitions.

(23) Nevertheless, the Advocate-General, Punjab, had very fairly taken the firm stand that the respondent-State had indeed nothing to hide and even the original appointments of *ad hoc* teachers (most of them way back in 1973 and 1974) were equally in accordance with the mandate of Article 16 and the rules governing the service. It was forcefully contended on behalf of the respondent-State that there was not the least hint of any arbitrariness or discrimination in originally making the appointments of *ad hoc* teachers and in the peculiar exigencies of the situation a resort was made to the open, and if one may say so, the statutory market, provided by the Regional Employment Exchanges within the State. It

was pointed out that for originally filling the vacancies at short notice as ad *hoc* teachers, reference was made to the local Employment Exchange and after consideration of all the available names in accordance with the regulations, selections were made for filling the posts by the competent authority.

(24) As I said earlier, *strictu sensu* the issue of the validity of the original appointments of *ad hoc* teachers cannot be raised in the total absence of pleadings on behalf of the petitioners. Nor would one wish to depart from the salutary rule that particularly in the writ jurisdiction, the parties should normally be confined to their pleadings. However, since the respondents had very fairly not shirked the issue and the point appears to be of some significance, I would deem it desirable to briefly examine the same.

(25) To appreciate the contentions of either side, it indeed becomes necessary to delie briefly into the history of the vast net work of statutory Employment Exchanges which have been developed over a period of more than 30 years under the Department of the Ministry of Labour and have now come to cover virtually the whole length and breadth of the country. The employment service first came into existence in India under the stress of demobilisation after the close of the Second World War in 1945. A sharp need was then felt for an adequate machinery that would satisfactorily handle the orderly re-absorption in civil life of a large number of defence personnel who were released from the service. In view of the complexity of the problem and to ensure coordination and uniformity in policies governing re-settlement of demobilized personnel, the Directorate-General of Re-settlement and Employment was created in July, 1945, by the Central Government. Thereafter, Employment Exchanges were gradually opened in several parts of the country and as yet their facilities were confined only to the demobilized service personnel and discharged war-workers. However, in the wake of the partition of the country, these very Employment Exchanges were also called upon to deal with the re-settlement of a large number of persons who were displaced in consequence of the partition. However, early in the year 1948, the Employment Exchanges were thrown open to all categories of workers in response to a persistent demand that the scope of the service should be extended. Later with effect from the 1st of November, 1956, in accordance with the report of the Shiva Rao Committe the day-to-day administration of Employment Exchanges was handed over to the State Governments.

(26) Statutory recognition of this service came by the enactment of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. By section 2(d) thereof Employment Exchange was defined. Under the provisions of the Act, all establishments under the public sector and all establishments where ordinarily 25 or more persons are employed to work for remuneration under the private sector came within the purview of the Act and are required to notify certain categories of vacancies to the appropriate Employment Exchanges as notified by the respective State Governments and further to render quarterly and biennial returns in the forms prescribed under the Act. Section 10 of the said Act empowers the Central Government to make rules by notification in the Official Gazette for carrying out the purposes of the Act and in pursuance thereto the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 were duly framed. Later the Apprentices Act, 1961 was provided for the regularization and control of apprentices in the selected trades and for matters connected therewith. It suffices to mention that the employment service within the country is now the joint concern of the Government of India and the Government of the States and the respective responsibilities of the two are broadly well-defined. Whilst the apex administrative body is the Directorate-General of Employment and Training, each State has a Director of Employment, who administers, controls and inspects Employment Exchanges in the State.

(27) Apart from the statutory provisions referred to above, the consolidated executive instructions are contained in the National Employment Service Manual issued under the authority of the Directorate of Employment Exchanges, Ministry of Labour and Employment. A bare reference to this Manual evidences the exhaustive nature thereof and the meticulous attention to detail regarding these Employment Exchanges both as regards the general policy and also as regards the particular procedure. The Manual is too exhaustive to merit notice in all its aspects here and it suffices to mention that Chapter VII in Vol. I thereof provides in great detail for the registration of all employment seekers and para 7.3 clearly high-lights the fact that the Employment Service is a free service and no fee shall be levied on employment seekers who resort to the assistance of the Exchanges. Para 7.4 then provides that applicants should (unless they secure special exemption) be registered at Employment Exchanges in whose

jurisdiction they reside. Chapter VIII then lays down an equally detailed procedure for the documentation of all vacancies. The following Chapter IX bears the heading 'Submission of Applicants' and Para 9.3 makes express mention that applicants should be selected irrespective whether they are employed or unemployed but cautions that among equally suitable applicants, preference should be given to the unemployed. Paras 9.13 and 9.15 in this context deserve notice in extenso :—

> 9.13. *"The first principle in making submission is that the employer should have as wide a field of choice as possible. No limit to the number of persons submitted should be laid down by the Exchange. An employer can see all X-1 cards in the Live Register if he so desires of applicants who possess the qualifications/experience laid down by him and according to the agreed scheme of selection arrived at between the E.O. and himself."*

> 9.15. "Where there is a large number of applicants who satisfy the qualifications prescribed, selection should be based on the relative merit and suitability as determined by consideration of factors such as previous experience, standard of academic qualifications, etc. Seniority, as a criterion, should be operative only when selection is to be made from amongst applicants whose relative suitability is *prima facie* equal."

(28) Now from the preceding three paragraphs, it is evident that statutory recognition has been extended to the Employment Exchanges by the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, and further that these are State regulated bodies governed in the fullest details by consolidated and detailed Government instructions contained in the National Employment Service Manual. The doors of these Employment Exchanges are wide open to all citizens both employed and unemployed, who seek employment without any monetary charge whatsoever. Whilst certain categories of large scale employers have even been bound to notify all vacancies in their establishments to the respective Regional Employment Exchanges, it is equally open to every employer to resort to and seek their assistance for filling in posts under their control. An elaborate and comprehensive procedure for first classifying and documenting

all the applications of the employment seekers and their subsequent forwarding and consideration by the employers has been spelled out. Apart from the fact that the Employment Exchanges are bound to send the names of suitable candidates against the vacancies referred to them, it is plain that in view of paras 9.13 and 9.15, there is no bar at all to the employer having access to all the applications on the live register of Employment Exchange. It appears to us a little too late in the day to hold that the vast net work of Employment Exchanges developed for over a period of 30 years by the Ministry of Labour and Employment over the whole country is not a well publicised medium, so as to form a reasonable classification for the purposes of a source of recruitment. The learned Advocate-General of Punjab, therefore, was on a firm footing in his submission that the Employment Exchanges provide an open, well publicised and a statutory market which fairly serves the interests of all those who are seeking employment as also all those who can provide the same.

(29) At the very outset, it may be noticed that it is the common case of the parties that the *ad hoc* employees satisfied the pre-requisites of the basic qualifications for regular appointments to their respective posts. It has not been the case of the petitioners even remotely that these *ad hoc* employees do not fulfil the statutory qualifications laid out in the rules. Once it is so then it deserves re-calling that the petitioners' own stand (vide Annexure P. 4) is that originally the *ad hoc* employees were offered employment temporarily on a six monthly basis and even here their services could be terminated at any time without notice. It was clearly specified in their terms of appointment that whenever a regular employee joins or a new appointment by transfer is made, they will have to be relieved forthwith. The respondent-State's stand is equally clear on the point that for reasons of administrative exigency arising from the immediate need of temporarily filling these vacancies, the appointing authority made references in this regard to the respective Regional Employment Exchanges. It was then after consideration of all the applicants available for the posts that selections were made by the appointing authority therefrom. The relevant pleading of the respondent-State is in the following terms: —

"The *ad hoc* employees have been treated as a distinct class. Their services are proposed to be regularised after

ensuring that while making their *ad hoc* appointments the channel of employment exchange which is open to all was utilized or in the alternative general advertisment was issued and the condition of at least one year's service and satisfactory work and conduct is fulfilled".

(30) As I have already noticed direct appointment under rule 2(e) has been negatively defined and, therefore, all appointments other than those by way of promotion or by transfer from the educational service of any other Government would necessarily fall within the classification of 'direct appointment' under this rule. It is not in dispute that the *ad hoc* employees satisfied the condition of basic qualifications prescribed by the rules for the posts. In the peculiar situation noticed above, the resort by the appointing authority to the open and well established channel of Employment Exchanges for temporarily filling the posts was not only legitimate but perhaps the only other fair mode available. It is obvious that at that stage, resort to general public press advertisement and thereafter consideration of all the applicants for merely appointing persons as a stop-gap arrangements immediately was neither possible nor practicable and would indeed have been an exercise in futility. Therefore, in the present case, the *ad hoc* appointment of fully qualified teachers through the open medium of Regional Employment Exchanges appears to be neither violative of Rule 7, read with rule 2(e) nor does the same in any way infract the provisions of Article 16.

(31) Whilst I am satisfied that even on principle, the original appointment of *ad hoc* employees in the present case is immune from any valid challenge, yet authority for the proposition is also not lacking. A Division Bench in *Dr. S. T. Venkataiah Thimmaiah and another* v. *State of Mysore and others,* (7) (supra), had to consider a similar situation and it was held as follows :—

"But if local candidates are appointed to certain posts after only advertising, those posts, and after considering applications received for these posts, or after notifying to the Employment Exchange the vacancies in those posts and after considering the persons whose names are sent up by the Employment Exchange, and subsequently if the services of such local candidates are regularised, it is

difficult to see how there will be violation of equality of opportunity for employment to public offices."

(32) Lastly, in this context it has to be borne in mind that the respondent-State has taken both a generous and a fair stand in considering the claims of the petitioners. It has been averred on its behalf that in the very peculiar circumstances and the administrative exigencies of the service, the existing *ad hoc* employees are to be screened and their services regularised if they fully satisfy the preconditions laid out in the impugned notification. The consideration of the petitioners' claims and those belonging to their class has merely been held in ebeyance and their appointments are to be made against the remaining vacancies which may be left unfilled after the regularisation of the services of the *ad hoc* employees and against those which may have arisen after the 31st of March, 1976.

(33) Learned counsel for the parties at the very outset had agreed that in view of the virtually identical questions of law and fact all these writ petitions would be governed by this common judgment. In view of the conclusions arrived at above, the writ petitions are without merit and are hereby dismissed. The parties are, however, left to bear their own costs.

A. D. Koshal, J.—I agree.

D. S. Tewatia, J.—I agree.

Bhopinder Singh Dhillon, J.—I agree.

Surinder Singh, J.—I agree.

H.S.B.

FULL BENCH

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia, Prem Chand Jain, Rajendra Nath Mittal, A. S. Bains and Harbans Lal, JJ.

NARENDER SINGH RAO,—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ No. 100 *of* 1977

December 13, 1977.

Punjab Superior Judicial Service Rules, 1963 *as amended by Punjab Superior Judicial Service (Haryana First Amendment) Rules* 1977—*Rules* 8 *and* 12—*Whether independent of each other—Rotational system—Whether can be read in the quota rule.*